

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

July 10, 2012
5:00 p.m.

Banning Civic Center
Council Chambers

The following information comprises the agenda for a regular meeting of the City Council and a joint meeting of the City Council and the Banning Utility Authority.

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

I. CALL TO ORDER

- Invocation – Pastor Ken Spicer, New Creation 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.

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.

PRESENTATIONS:

1. Sunset Grade Separation Update (ORAL)
2. I-10 By-Pass Update (ORAL)

IV. CONSENT ITEMS

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

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

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

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

1.	Approval of Minutes – Special Meeting – 06/26/12 (Closed Session).	1
2.	Approval of Minutes – Regular Meeting – 06/26/12	3
3.	Banning Bench Community of Interest Request for Support Letter. . . .	23
4.	Waiver of Police Officer Fees for Security during the 2012 Playhouse Bowl Evenings in the Park Concert Series beginning August 2, 2012 at the Repplier Park Bowl.	26
5.	Animal Control Field Services Contract between the City of Banning and the City of Beaumont.	27
6.	Approve Contract Services Agreement with ComSerCo for the City of Banning Police Department	37
7.	Intent to Participate in a Joint Comprehensive Operations Analysis (COA) of the Pass Transit System	66
8.	Resolution No. 2012-55, Amending the Lease Agreement with Fire Memories, Inc. for the Use of Property to House the Temporary Fire Museum Located at 5261 W. Wilson Street.	68
9.	Resolution No. 2012-58, Approving the Purchase of One (1) 2011 Ford Crown Victoria Police Interceptor Sedan in the Amount of \$24,793	94

- Open for Public Comments
- Make Motion

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

V. CONSENT ITEMS

1.	Resolution No. 2012-09 UA, Authorizing the Submittal of a Grant Application for a Local Groundwater Assistance Grant to the California Department of Water Resources.	98
----	---	----

2. Resolution No. 2012-10 UA, Authorizing the Implementation of the Regional Maximum Benefit Objectives in the Beaumont Management Zone. 101

Adjourn Joint Meeting of the Banning City Council and the Banning Utility Authority and reconvene the regular City Council Meeting.

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

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

VII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

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

VIII. ADJOURNMENT

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

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to “share” his/her three minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

06/26/2012
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Robinson on June 26, 2012 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

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

CLOSED SESSION

City Attorney said that closed session items involve labor negotiations with the City's bargaining units International Brotherhood of Electrical Workers (IBEW) – Utility Unit and General Unit, Banning Police Officers Association (BPOA), and City of Banning Association of Managers (CBAM) pursuant to Government Code Section 54957.6; also a matter of pending litigation pursuant to the provisions of Government Code Section 54956.9(a) regarding OG Grasshopper, Inc. vs. City of Banning; and one matter of potential litigation pursuant to the provisions of Government Code Section 54956.9. A status report will be given on each of those items.

Mayor Robinson said that he would like the Council to consider adding an item to the agenda regarding an opposition media statement. This request is from Erin Sasse of the League of California Cities regarding a vote to be taken tomorrow in Sacramento on an Assembly Bill and a Senate Bill where the City of Banning could lose funding and he would like to discuss this item. Mayor Robinson stated that he does have a recommended press release.

City Manager said that this should be added to the open session of the regular City Council Meeting. There was Council consensus to add this to the regular City Council agenda.

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

Meeting went into closed session at 4:04 p.m. In regards to the matter of potential litigation Councilmember Hanna left the small conference before the matter was discussed because of a conflict of interest.

Meeting reconvened at 4:33 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:34 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

06/26/12
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the City Council Sitting in Its Capacity of a Successor Agency and the Banning Housing Authority; and a joint meeting of the City Council, the Successor Agency and the Banning Utility Authority was called to order by Mayor Robinson on June 26, 2012 at 5:03 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts
Councilmember Franklin
Councilmember 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
Duane Burk, Public Works Director
Leonard Purvis, Police Chief
Bill Manis, Economic Development Director
Heidi Meraz, Community Services Director
Michelle Green, Deputy Finance Director
Rita Chapparosa, Deputy Human Resources Director
Marie A. Calderon, City Clerk

The invocation was given by Pastor Steve Bierly, Church of the Nazarene. Council Member Machisic invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney reported that the Council met in closed session and discussed one matter of potential litigation and no action was taken. There was discussion in regards to the litigation matter regarding OG Grasshopper, Inc. vs. City of Banning and a status report was given and no reportable action was taken. Also a status report was given on labor negotiations with the City's bargaining units and no reportable action was taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Charlene Sakurai, Bermuda Dunes addressed the Council stating that next Wednesday is one of her favorite holidays and that is the Fourth of July. That is something that a lot of us look forward to eagerly every year celebrating our country and our flag and having all of the fireworks, etc. but she thinks it would be a wonderful thing if everyone in Banning who owned a flag would put it out for the Fourth of July or even the whole week and celebrate our country and what it means. She also read that there is going to be a concert at Repplier Park at the Playhouse Bowl on the evening of the Fourth of July and she thinks it is wonderful.

Fred Sakurai resident of Banning said continuing on from two weeks ago he said that they had to sell their property up on the Banning Bench and didn't realize it at the time but instead of them paying property taxes to the City it was sold to a Korean non-profit religious organization therefore no more property taxes to the City of Banning. The same religious group non-profit purchased the property of the Black Bench where Sun Cal gave up their development ideas therefore that came off the property tax rolls of the City of Banning also. Now that same firm that owns the Highland Springs Resort is also throwing road blocks in front of the Pardee/Butterfield Development Project. He doesn't know whether their long-range plans are to try to stall that development so that they can in turn step in and buy that property and take that off the property tax rolls or not but this is a consideration. Are there different property tax rates for religious non-profit groups that do not have services on their site? Has anyone ever gone to a church service at Highland Springs Resort? We should try to do all we can to stop this lawsuit against our City.

Art Welch addressed the Council representing the Banning Chamber of Commerce in announcing the upcoming Wiskerino Festival at the Gilman Ranch on July 6th from 4 to 8 p.m. The whole festival is family-oriented but the primary objective is the Wiskerino Contest. There will be games and fun for the family, barbeque, and a wine and drink tent. He invited everyone to join the Wiskerino Contest in kicking off this program of Stagecoach Days. He also thanked Fred Mason and his staff, especially Carla, in helping them put up signage out on Ramsey announcing the Wiskerino Festival.

CORRESPONDENCE:

Mayor Robinson said that the Council did receive correspondence from Erin Sasse who is our League of California Cities representative for the Riverside area asking the Council to write a letter of opposition to the RDA Trailer Bills that are going on tomorrow that they do not include language that will help our City but will, in fact, be a detriment to our City and our Successor Agency.

Motion Botts/Franklin to add this item to the agenda. Mayor Robinson asked if there were any public comments. There were none. **Motion carried, all in favor.**

Mayor Robinson asked the City Clerk to read the Press Release for the benefit of the public. City Clerk read the item (see attachment "A").

City Manager paraphrased that what this would do is give the Department of Finance all determination whether to withhold our sales tax or property tax or if they felt that possibly the use of Redevelopment Funds in something they disagreed with. Once again the State proves that they were not able to have a good system to transition from Redevelopment Agencies to Successor Agencies and they are making this up as they go along and they are making this up in order to make cities think about it. Basically there are no appeal rights or anything else and they are basically going to go ahead and say we are going to take your property tax because we don't think you did this right; we are going to take away your sales tax because we don't think you did this right. He is more than happy to have more discussion but he thinks for us it is one of those things that is pretty easy for the Council to pass. He doesn't know whether it is going to be effective or not. He believes our State Senator is on the Budget Committee for the Senate so he is sure we can give him a call or that he hears about it right away.

Motion Hanna/Botts that the City Manager release this letter to the media and to address our concerns to our elected officials. Mayor Robinson asked if there were any public comments. There were none. **Motion carried, all in favor.**

PRESENTATIONS:

1. Proclamation – Youth Arts Council

Mayor Robinson read the proclamation for the benefit of the audience and he and the City Council Members presented the proclamation to Cindy Watson, Director and the Youth Arts Council Members (YAC).

YAC President, Heather and various members of the Youth Arts Council addressed the Council thanking them and the City for their support and also thanked their Director for everything she has done and how this program has made a difference in their lives. Cindy Watson thanked the Mayor and Council and Carol Newkirk for this opportunity and said she was proud of the youth and this has been one of her favorite jobs.

Update on Correspondence Received

City Manager apologized for walking out of the room and stated that he called Senator Bill Emmerson. Senator Emmerson said that he would be voting no on that part of the budget trailer bill because he has concerns also.

PRESENTATIONS (con't.)

2. Proclamation Request - Proclaiming July 1, 2012 as "Canada Day"

Bill Manis, Economic Development Director gave the staff report on this item as presented in the agenda packet explaining the reasons for this request that came from the County Board of Supervisors to the twenty-eight cities in the county of Riverside to establish July 1st as Canada Day and each year thereafter.

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

Motion Machisic/Botts to approve the request from the County Board of Supervisors to: (1) Declare July 1, 2012 and every July 1 hereafter as Canada Day in Banning; (2) Issue a proclamation proclaiming recognizing that every July 1 as Canada Day in Banning and issue the proclamation to the diplomatic representative of the Canadian government and executives of the Canada/California Business Council by the Banning City Council and/or their designee; and (3) as a courtesy and to honor the Canadian government and her residents, have the Canadian flag flown on Canada Day along with the flag of the United States, in accordance with the flag protocol, at the Banning Civic Center. Motion carried, all in favor.

CONSENT ITEMS

Mayor Pro Tem Franklin pulled Consent Item No. 5 for discussion and Mayor Robinson pulled Consent Item No. 6 for clarification.

1. Approval of Minutes – Special Meeting – 06/12/12 (Closed Session)

Recommendation: That the minutes of the Special Meeting of June 12, 2012 be approved.

2. Approval of Minutes – Regular Meeting – 06/12/12

Recommendation: That the minutes of the Regular Meeting of June 12, 2012 be approved.

3. 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.

Recommendation: That Ordinance No. 1453 pass its second reading and be approved.

4. Resolution No. 2012-49, Repealing Resolution No. 2006-04, A Recruitment and Incentive Program for Specified Classifications of Employment in the City of Banning.

Recommendation: That the City Council adopt Resolution No. 2012-49.

7. Authorize the Administrative Services Director to amend the budget and make any necessary budget adjustments, appropriations and transfers related to the General Fund and Gas Tax Fund.

Recommendation: Authorize the Administrative Services Director to amend the budget and make any necessary budget adjustments, appropriations and transfers related to the General Fund transfer to/from the Gas Tax fund.

8. Report of Investments for April 2012

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

9. Report of Investments for May 2012

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

10: Approval of Accounts Payable and Payroll Warrants for Month of April, 2012

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

11. Approval of Accounts Payable and Payroll Warrants for Month of May, 2012.

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

Motion Franklin/Machisic that the City Council approve Consent Items 1 through 4 and 7 through 11. Mayor Robinson asked if there were public comments on those items. **There were none. Motion carried, all in favor.**

5. Resolution No. 2012-57, Adopting a Policy for Notification of Violations for Title 17 Zoning Code.

Mayor Pro Tem Franklin said that this is something that a lot of people need to know about and there has been a lot of concern about this item and felt some clarification is needed.

Director Zai said that the City's municipal code and zoning code do not designate a time frame for providing a reasonable notice regarding zoning code violations. She went over the current standard that the City uses now and the new recommendation to adopt a policy providing a minimum of 10 calendar days to correct the violations.

There was Council and staff discussion regarding when this takes effect, noticing requirements, and compliance issues.

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

Don Smith addressed the Council regarding tenant-occupied properties and his concerns regarding compliance.

Director Zai said that there will be flexibility and officer discussion regarding certain violations. Staff will work with the property owner in those cases and work on a schedule in regards to compliance and then go from there.

City Manager assured the Council that it is staff's goal to work with those legitimate businesses that belong in that zoned area. Staff is talking about those businesses that may not have a business license, may not be in the right zoning, etc.

Motion Botts/Franklin to approve Consent Item No. 5, to adopt Resolution No. 2012-57, approving and adopting a policy requiring that notices issued which relate to Banning Zoning Code violations provide a reasonable time frame for compliance including, at a minimum, a 10 calendar day notice period. Motion carried, all in favor.

6. Banning Centennial Committee Request for the City's Quarterly Newspaper

Director Manis gave the staff report as presented in the agenda packet. Staff feels it is an appropriate use because the City is not able to give any funds towards the Centennial celebration and events planned for next year and this is one way in which the City can actually contribute towards the event.

Councilmember Hanna said the back page would be Centennial news. It would be historical articles about Banning and articles about upcoming events and so forth and logos of the major sponsors would be at the bottom of the article.

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

Motion Botts/Robinson that the City Council allow the Banning Centennial Committee to utilize the back page of the City's Quarterly Newsletter for four to five issues to highlight historical information about the City and to place the logos of the major sponsors for the year-long celebration. This would represent the City's contribution to the Centennial event. Motion carried, all in favor.

PUBLIC HEARINGS

1. Resolution No. 2012-53, Approving the Consumer Price Index (CPI) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2012/13.
(Staff Report – Duane Burk, Public Works Director)

Mayor Robinson opened the public hearing on this item and asked for a staff report.

Director Burk gave the staff report as presented in the agenda packet. The residential impact would be about 45 cents per month and the commercial rate would adjust accordingly to the tonnage. This is kind of a housecleaning item and presented as a public hearing and a public hearing is normal when fees are increased but because the notice was done last year, a public

hearing is not required and should be presented as a report. He stated that Steve Glenn from Waste Management is present if the Council has any questions.

City Attorney stated that the agreement provides for an automatic CPI (Consumer Price Index) increase. He doesn't think that this is as much as the Council approving the increase and that is why it is not really a public hearing item. The agreement provides that if there was a protest it basically goes through the City Manager and the City Manager could protest the approval and then the Council would resolve that in the event of a dispute. The City Manager did not initiate the protest process in this case and he would characterize that this is here for reference so that the public is not caught by surprise by an increase and this would apply starting July 1, 2012.

Mayor Robinson asked if there were any public comments on this item. Seeing no one come forward he closed the public hearing on this item.

Motion Machisic/Botts that the City Council adopt Resolution No. 2012-53, Approving the Consumer Price Index (CPI) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2012/13, as set forth in the City of Banning's Franchise Agreement with Waste Management of the Inland Empire. Motion carried, all in favor.

JOINT MEETING

Mayor Robinson recessed the regular City Council Meeting and called to order a Joint Meeting of the Banning City Council and the Banning City Council Sitting In Its Capacity of Successor Agency and the Banning Housing Authority and a Joint Meeting of the Banning City Council and Successor Agency and the Banning Utility Authority.

REPORTS OF OFFICERS

1. Amending the Contract Services Agreement with Habitat for Humanity Approving the Reimbursement of Labor and Materials as part of the Affordable Housing Development. (Staff Report – Zai Abu Bakar, Community Development Director)

Director Zai gave the staff report as presented in the agenda packet. This is a request to amend the existing contract with Habitat for Humanity to reimburse them for labor and materials as part of the affordable housing development. As the Successor Agency and Housing Authority Board is aware you have a two-year agreement with Habitat for Humanity. The current contract allows the fund to be used for property acquisition. Habitat for Humanity has requested that they be reimbursed for labor and materials just because it is very hard to raise funds. In terms of their work effort they have purchased about 8 homes and four lots. She stated that William Bainter is here from Habitat for Humanity and he would update the Council in regards to their progress. The funding for this is already in the line item that has been approved by the Oversight Board and the State Department of Finance. The amount they are asking for to be reimbursed is \$51,592.00. Should the Successor Agency and the Housing Authority Board approve this item it will be presented to the Oversight Board on Thursday. Staff's recommendation is that this be approved.

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

Motion Botts/Franklin that the Agency Board adopt Resolution No. 2012-11 SA, Recommending the approval to the Oversight Board of an amendment to the Habitat for Humanity current agreement (FY 2011-12) to include reimbursement of labor and material expenses related to the construction and rehabilitation of the home qualifying low income families in Banning. Motion carried, all in favor.

Chairman Robinson turned the meeting over to Chairperson Hanna of the Banning Housing Authority for action.

Chairperson Hanna asked Mr. Bainter if he would like to address the Board.

Mr. Bainter thanked the Board and the Council for the support that they have given to Habitat for the last two years especially and even before that the Council assisted them with some houses and they have had a good partnership. He went over the things that they have been able to accomplish with the two-year grant they received and what they are currently doing. They definitely can use some more assistance with some funds for the remainder of their rehabs and hope that will come to fruition. He said that we all feel strongly about the money that is there and hate to see it go back to the State and if it can be used here locally, they will definitely make good use of it in finishing up the houses they have left.

Boardmember Botts said that the request is for \$50,000 and there is an un-appropriated amount of \$148,000 approximately that the Board has already approved for that two-year contract with Habitat. Director Zai said that was correct; that is the fund balance of that current contract.

Boardmember Botts asked if they could amend things and simply change the number to \$148,000; we have already approved it for Habitat. The technicality is capital versus operating funds and short of that are you going to come back and ask us again for the remainder of the funds; the issue here is the Oversight Board.

There was further staff and Board discussion regarding this item, the risks involved and the issue that the contract ends on June 30, 2012.

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

Motion Franklin/Botts that the Housing Authority adopt Resolution No. 2012-02 HA, Amending the Habitat for Humanity current Agreement (FY 2011-12) to include reimbursement of labor and material expenses related to the construction and rehabilitation of the homes for qualifying low income families in Banning with the modification of the amount to \$148,000. Motion carried, all in favor.

Boardmember Hanna said that the Successor Agency should redo Resolution No. 2012-11 SA to change that to \$148,000.

Boardmember Botts amended his previous motion to adopt Resolution No. 2012-11 SA with the change to \$148,000. Boardmember Machisic seconded the motion. Motion carried, all in favor

Meeting recessed at 6:12 p.m. and reconvened at 6:24 p.m.

2. Adoption of Resolutions Related to the Two Year Budget Plan for Fiscal Year 2012-13 and 2013-14 for the City, Successor Agency and Banning Utility Authority; Adoption of the GANN Limit and Adoption of the Classification and Compensation Plan Amendment.
(Staff Report – June Overholt, Community Development Director)

Director Overholt started her power-point presentation stating that we will focus on the General Fund and some of the material the Council has already heard because of the problems with the State and that is why the CRA is mentioned. Basically we do have a budget process that we go through when we budget and we do budget conservatively and often times that means that the revenues are on the lower side and the expenditures are a little bit on the higher side so that we capture a little bit of the worst case scenario. Just as a reminder to those that may be listening at home the General Fund is really the critical fund that we deal with because it is our discretionary fund so it is responsible for all of our public safety, administration, Council and all the things you normally think of when you think of the City. Some of the biggest challenges that the City has had since 2007 is that we have had declining revenues. We used to have reserves of \$9 million and they are now down \$1.5 million. Council put before staff the challenge a few years ago that this budget will be balanced so she is presenting to the Council a balanced budget and she will explain how staff has done that. (See attached Exhibit B).

Mayor Robinson said that each of the Council Members have met one on one with Director Overholt and the City Manager over the past couple of months to talk in detail about the budget and were aware of all of these things prior to this meeting and this is just a summary and recap form. It is very well put together and it is something that they can all definitely deal with and understand.

City Manager said that staff wanted to make sure that the public saw what the Council had looked at, at least individually as you met with staff and it is important that they understand. Municipal accounting is very difficult for everybody and if they have questions, they are more than welcome to come down to city hall and talk with staff to go over some of those issues.

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

Motion Botts/Hanna that the City Council adopt Resolution No. 2012-47, Adopting the Annual Budget for the Fiscal Period July 1, 2012 through June 30, 2013 and July 1, 2013 through June 30, 2014 and Making Appropriations to Meet Expenses Approved Therein and Approving Budgetary Policies and Recommendations. Motion carried, all in favor.

Motion Hanna/Robinson that the Banning Utility Authority Board adopt Resolution No. 2012-07 UA, Adopting the Annual Budget Plan for the Fiscal Period July 1, 2012 through June 30, 2013 and July 1, 2013 through June 30, 2014 and Making Appropriations to Meet Expenses Approved Therein. Motion carried, all in favor.

Motion Franklin/Robinson that the Successor Agency Board adopt Resolution No. 2012-08 SA, Adopting the Budget Plan for the Fiscal Period July 1, 2012 through June 30, 2013 and July 1, 2013 through June 30, 2014 and Making Appropriations to Meet Expenses Approved Therein. Motion carried, all in favor.

Motion Machisic/Franklin that the City Council adopt Resolution No. 2012-48, Establishing an Appropriations Limit for the Fiscal Year 2012-13 and 2013-14, Pursuant To Article XIII B of the California Constitution. Motion carried, all in favor.

Motion Franklin/Machisic that the City Council adopt Resolution No. 2012-50, Amending the Classification & Compensation Plan for the City of Banning. Motion carried, all in favor.

Mayor Robinson adjourned the joint meeting and reconvened the regular City Council Meeting.

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

City Council

Councilmember Hanna -

- Along with the Wiskerino Festival on July 6th as a precursor to Stagecoach Days which will be held on September 7, 8 and 9 and just before then is Rotary Club's Spaghetti Dinner to be held on Wednesday, Sept. 5th from 4 to 6:30 p.m. at the Banning Community Center. This dinner is a cooperative effort of the Banning Rotary Club and Habitat for Humanity as a fundraiser and a terrific community event. Tickets are available now.

Mayor Pro Tem Franklin –

- The Regional Water Meeting will be held on Thursday, June 28th and she and Councilmember Botts will be attending that meeting on behalf of the City.

Councilmember Machisic –

- Following the WRCOG (Western Riverside Council of Governments) General Assembly the Executive Committee met with legislators Jeffries, Miller, Nestande and Cook. They had some very interesting things to share with the group about how the legislature operates and one of the things they do, and you talk about smoke and mirrors, when they cut education they get a saving in education. If schools are due to be paid on July 1st they postpone it to August 1st and in that way they save one month of the school budget for the State. The problem is that in that month the schools have to borrow money and there was a statement made by one of the legislators that on a State level it costs the schools about \$100 million dollars to borrow the money for that one month. Then also they have suspended Proposition 98 on occasion when they feel that they have to have some money. Senator Jeffries had an interesting

comment and has indicated that he has tried for five years to get 24 hours to read the budget but he failed again this year. Assemblyman Miller said that they gave him a document covering 10,000 pages and they gave him four hours to read it. There was another interesting comment and you know how we can only discuss certain things in the closed session because of the Brown Act he found out that the Assembly and Senate are not covered by the Brown Act so the political caucuses get together and decide on their position whatever it might be and then they come out in front and vote on it. Also he wanted to comment on something that is especially important for the City that in the good Governor's collection of money he has collected all the building money for all the courthouses in California and has also absorbed their reserve fund and Banning should be very, very fortunate that we are among the last court houses that are to be built in the State for whatever number of years you determine. They also talked about the cut to schools and the State always likes to be the good guys and so what they do is cut the State school budget and then the school districts have to lay off people and then turn out to be the bad guys and so they kind of pass the buck to them and the State is happy because they have not forced the layoffs. Also, they tried to make sure that the Speaker of the Assembly, as well as, the Senate conform to their position. They mentioned a woman and two other senators from the Valley who refused to vote the method that the Speaker indicated so they went ahead and voted and before they got off the Senate floor their offices were locked and they were assigned to a building across the street from the Capital so they have various methods of making you conform. It was an interesting session and a real eye opener to listen to some of these things in regards to the political maneuvering that takes place.

Mayor Robinson –

- He thanked the Sun Lakes Charity Group, the residents and everyone in putting on a great function this past week and the funds that were raised will help all of the groups in the community.
- The Boys and Girls Club Golf Tournament was held yesterday and some of the Council participated. It was a great function and they raised a lot of money and they had great supporters. You can see by this evening that as a City we cannot support the youth group like we used to or groups like this.

City Committee Reports – There will be an Oversight Board Meeting on Thursday, June 28th.

Report by City Attorney – There were none.

Report by City Manager –

- July 10th the Family Dollar will have a Grand Opening
- He called Bill Emmerson regarding the Budget Trailer Bill as he mentioned before and he will also be calling Assembly Paul Cook. Senator Emmerson is on the Budget Committee for the Senate and said that there are a lot of people unhappy with that provision but there are some good parts of that provision that explain things but there are also some real bad parts to it.
- There will be paving from San Geronio to Martin Street on Ramsey and that will commence tomorrow June 27th for two days. Also, the signal on San Geronio and Ramsey will be timed and not on demand like it usually set.

ITEMS FOR FUTURE AGENDAS

New Items – None

Pending Items – City Council

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

ADJOURNMENT

By common consent the meeting adjourned at 6:50 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.

Corresp.
Council Mtg.
6-26-12

June 26, 2012

FOR IMMEDIATE RELEASE

Contact: Mayor Don Robinson

OPPOSITION MEDIA STATEMENT

City of BANNING, CA Opposes Redevelopment Budget Bill, Destabilizes Local Revenues

The city of Banning is jeopardized by the provisions in AB 1484 and SB 1024, the Redevelopment Budget Trailer Bill. The Legislature just put these measures into print today, giving affected parties less than 24 hours to review before its scheduled hearing in the Senate Budget and Fiscal Review Committee today at 5 p.m. and a potential floor vote tomorrow morning.

What the bills reveals is unsettling because they neglect to address many issues that our city and many others have raised to our legislators during months of on-going discussions. The city of Banning faces dire consequences should some necessary amendments not be included in the outcome of this bill.

The Legislature now has a short window of opportunity to amend AB 1484 and SB 1024. A "safe harbor" provision in this bill was intended to protect those successor agencies that have been given a finding of completion, yet remains open as to subsequent action by the Department of Finance in terms of the final outcome of enforceable obligation funds. To truly be a "safe harbor," the finding of completion should be the final step for successor agencies. Furthermore, the bill fails to address a lack of due process in the dissolution process. And lastly,

EXHIBIT B

CITY CLERK
6-28-12

City of Banning Budget Presentation

June 28, 2012



Budget Process

Department submittals
City Manager review and direction
Finance review and compilations

Budget includes...

Conservative estimates
Revenues – estimates based on trends and/or external information
Expenditures – estimates based on trends, savings, or new requests

Agenda

General Fund
CRA impacts
Other Funds
Recommendation

Budget Document

Budget Message
Fund Summaries – All funds
Tables & Graphs
Capital requests (new)
General Fund
Overview, Tables and graphs
Personnel – position control
Supplemental Information
Policies; Cann limit, fund descriptions

16

2

4

General Fund

Collects the general tax receipts and fee revenue not allocated by law.
Pays for general services (police, fire, public works, administration)
Responsible for all other funds that operate at a deficit

CF – Budget Challenge

Since 2007, there have been operating deficits

Reserves went from \$9 million to \$1.5M
Council established FY13 goal for balanced budget several years ago
FY13 balanced
FY14 deficit

FY13 – Budget Challenges

Started with Structural deficit	\$467,565
State of California	
Loss of VLF revenues	\$70,000 to \$100,000
Elimination of CRA (incl PERS)	\$267,000
Economy	
Property taxes declining	\$303,000
PERS increases	\$85,000

TOTAL of these items >>>> \$1,222,565

CRA elimination – Impact to CF

FY11 – CF absorbed Code Enforcement, Gang Task Force, Weed Abatement
FY12 – CRA reduction in community contracts
FY13 – CF absorbs staffing previously allocated to CRA \$267,000

State vs City challenges

Potential State grab of reserves

Successor Agency Admin	\$250,000
Shortage of RPTF (tax increment)	\$112,000
may cause the General Fund to lose pass thru revenue	

These items could create deficit to CF

9

FY 13 - Budget

CF is being presented as balanced

Revenues	\$12,955,018
Expenditures	\$12,955,018

Balancing included -

- Additional budget reductions by departments
- One time solutions/positioning costs
- Increase in sales tax
- Reductions in WOE requirements
- Change in Admin charge to Electric increased transfer
- Negotiating contracts
- Engine 20 contract
- Employee negotiations

	\$100,000
	\$360,000

16

FY14 - Budget

Presented with Deficit

Revenues	\$12,590,835
Expenditures	\$13,221,268
Deficit	(\$ 630,413)

Balancing Challenges

- Payroll/PERS increases
- Grants/Funding agreements end (COPS grant)

18

Future Opportunities

Developments

- Paseo
- Courthouse
- Pardee
- Morongo
- San Juan

Good news /bad news

- Good progress being made
- Timing of benefit to City revenues several years away

12

CF Reserves

Reserves estimated at \$1.5M in FY13
 budget document
 Policy changed to reflect \$1.5M or 25% of
 operating budget
 Financial statements will reflect actuals

13

Capital Improvement Funds

Includes funds that are restricted in use,
 i.e. Development impact funds, major capital
 projects
 Projects will be budgeted when presented
 to Council

Total Adjusted Revenues \$ 6,500
 Total Adjusted Expenditures \$ 35,000

15

Special Revenue Funds

Includes funds that are restricted in use.
 Examples include:

Riverside/Police MOU
 Gas Tax
 Measure A
 Grants
 CPDs and LMDS

Total Adjusted Revenues \$ 3,504,792
 Total Adjusted Expenditures \$ 3,972,118

14

Enterprise Funds

Includes funds that are considered to be like
 a business. Examples include:

Airport
 Transit
 Refuse
 (Water, Wastewater, and Electric will be discussed
 separately)

Total Adjusted Revenues \$ 4,610,635
 Total Adjusted Expenditures \$ 4,635,644

16

Internal Service Funds

Include funds that provide services to other City operations. Examples include:

- Risk Management (worker's compensation, general liability, unemployment)
- Fleet
- Information Services
- Utility billing services

Total Adjusted Revenues \$ 5,225,774
Total Adjusted Expenditures \$ 5,471,697

17

Water Funds

	Available balance @ 6/30/2012	Projected YTD Gain(loss)	Projected balance @ 6/30/2013
660 - Water Operations	1,739,493	297,855	2,037,348
661 - Water Capital Facilities	4,587,406	(587,500)	3,999,906
666 - BUA Water Capital Project	1,265,582	(632,250)	633,332
669 - BUA Water Debt Service	88,124	500	88,624
Combined Fund Balance >>>	7,680,605	(921,395)	6,759,210

18

Wastewater Funds

	Available balance @ 6/30/2012	Projected YTD Gain(loss)	Projected balance @ 6/30/2013
680 - Wastewater	1,169,374	187,521	1,356,895
681 - Wastewater Capital Facility	9,343,866	20,000	9,363,866
683 - BUA Wastewater Capital Project	3,043,157	(298,500)	2,744,657
685 - State Revolving Loan	766,538	2,897	769,435
680 - BUA Wastewater Debt Service	90,056	500	90,556
Combined Fund Balance >>>	14,412,991	(87,582)	14,325,409

19

Reclaimed Water Funds

	Available balance @ 6/30/2012	Projected YTD Gain(loss)	Projected balance @ 6/30/2013
662 - Irrigation Water	2,768,302	(70,000)	2,698,302
682 - Wastewater Tertiary	3,445,375	254,000	3,699,375
Combined Fund Balance >>>	6,213,677	184,000	6,397,677

20

20

Electric Funds

Electric Funds	Available balance @ 6/30/2012	Projected YTD Gain/Loss	Projected balance @ 6/30/2013
670- Operations	6,382,162	111,873	6,494,035
672- Rate Stability	5,960,509	60,000	6,020,509
673- Electric Improvement	8,232,568	(60,000)	8,172,568
674- Electric Bond Project Fund	13,590,975	(5,464,189)	8,126,786
675- Public Benefit Fund	467,482	(22,043)	445,439
676- Electric Debt Service Fund	492,406	500	492,906
Combined Fund Balances >>	35,126,102	(5,373,859)	29,752,243

Successor Agency

Subject to change based on Department
of Finance, County and Oversight Board

Redevelopment Property Tax Trust Fund Distributions By Auditor-Controller

- First, To Pay A-C Administrative Costs
- Second, To Pay Contract And Statutory Pass-Through Obligations Of Former RDA
- Third, To SA So That SA Can Pay Enforceable Obligations On Approved ROPS (SA Places This Amount In Its Redevelopment Obligation Retirement Fund)
- Fourth, To Pay SA Administrative Cost Allowance
- Fifth, To Pay Any Residual Balance To Local Taxing Entities

Source: GFA Meeting 3/6/2012
GOALB/LB/DA/ACT/VS

Successor Agency

- Redevelopment Obligation Retirement Fund receives the RPTTF revenue from County (increment)
- Debt service funds makes bond payments
- Bond funds – continue projects approved on ROPS
- Successor Agency pays for the Administration budget of \$250,000

Personnel Changes

Authorized positions (full time) for FY12	141.00
PD - Reduction in IASIN funded position	(1.00)
Electric - Reorganization of positions	-
Electric - restore Office Specialist	1.00
Utilities - add Accountant II	1.00
Authorized positions (full time) for FY13	142.00
All authorized positions for FY13 <i>(includes part time, elected, title control)</i>	177.18

Recommendation

Approve the resolutions approving the estimated revenues, appropriations and position control for the Fiscal Year 2012/2013 budget for the City of Banning, Banning Utility Authority and Successor Agency

Approve the GANN limit

Approve changes to Class and Comp plan

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: July 10, 2012

TO: City Council

FROM: City Manager

SUBJECT: Banning Bench Community of Interest Request for Support Letter

RECOMMENDATION:

That the City Council review the attached request for a support letter to be submitted to the Riverside County Local Agency Formation Commission ("LAFCO") on behalf of the Banning Bench Community of Interest ("COI") requesting an extension of their unincorporated community status (U.C.).

BACKGROUND:

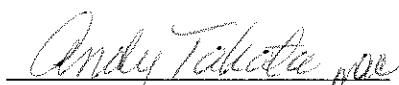
On June 19, 2012 the City of Banning's City Manager's office received a letter from the COI requesting a letter of support of their application to LAFCO for a five (5) year extension of their unincorporated status.

The Banning Bench is located in an unincorporated area North East of the City of Banning. The COI represents approximately 200 houses and 800 acres of land. Although the Banning Bench Community is not incorporated in the City of Banning many of the residents contribute to the City in multiple ways, by providing jobs, conducting business within the City limits and cooperatively working on the management of vital resources such as water.

FISCAL DATA:

There is no fiscal impact.

**RECOMMENDED AND
APPROVED BY:**



Andy Takata
City Manager



BANNING BENCH

Community of Interest Association, Inc.

10610 Gilman St.
Banning, CA 92220

copy to Diane
6/19.
City of Banning
RECEIVED *OS*

JUN 19 2012

City Manager's Office

June 19, 2012

To: City Manager Andy Takata

From: Banning Bench Community of Interest.

Subject: Banning Bench Un-incorporated Community status.

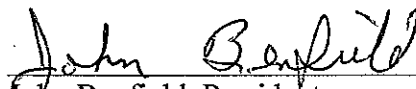
Dear Sir,

As you know the Banning Bench community of Interest (C.O.I.) is applying to Riverside County L.A.F.CO. for a five (5) year extension of our un-incorporated Community status (U.C.) .

Enclosed is a copy of a letter from Supervisor Marion Ashley to L.A.F.CO. supporting our request. We have discussed our proposed extension with Mayor Don Robinson and we were informed the City of Banning has no objection to our five (5) year extension.

A letter from the City of Banning to Riverside County L.A.F.CO supporting our request would be greatly appreciated.

Sincerely,



John Benfield, President
Banning Bench Community of Interest

County of Riverside



SUPERVISOR MARION ASHLEY
FIFTH DISTRICT

City of Banning
RECEIVED

JUN 19 2012

City Manager's Office

June 12, 2012

George Spiliotis
Executive Director
Local Agency Formation Commission (LAFCO)
3850 Vine Street, Suite 110
Riverside, CA 92509

Dear Mr. Spiliotis,

I am writing in reference to the Banning Bench Unincorporated Community Five year Review.

It is my understanding that the designation of the county's portion of the Banning Bench as an unincorporated community is being considered for renewal by LAFCO. I would like to express my support for the Banning Bench to maintain their unincorporated status.

Presently the county and the City of Banning have agreed to work together in formalizing the master plan for the Banning Bench. Currently, the Pass Water Agency, the City of Banning and the Banning Heights Mutual Water Company (BHMWC) are negotiating an agreement to operate and maintain flume system in the San Geronio Mountain which provides potable and irrigation water to the Bench. The Banning Bench COI continues to interface with the BHMWC as an Unincorporated Community during these negotiations.

Based on Town Hall meetings and on the community feedback I have received, along with letter on this matter, I am in favor of maintaining the UC designation for the Banning Bench.

Your consideration to this request is very much appreciated and please do not hesitate to contact me at 951-955-1050 should you have any questions.

Very Truly Yours,

Marion Ashley
5th District Supervisor
County of Riverside

25

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: July 10, 2012

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Police officer fees for security during the 2012 Playhouse Bowl Evenings in the Park Concert Series beginning August 2, 2012 at the Repplier Park Bowl.

RECOMENDATIONS: "The City Council review and provide direction on a request from the Banning Playhouse Bowl Association for two police officers to be present between the hours of 6:30 – 9:30 P.M. for each of the five concerts during the Playhouse Bowl Evenings in the Park Concert Series."


JUSTIFICATION: Because the police department does not have the authority to waive city fees, this request is being forwarded to the City Council for consideration.

BACKGROUND & ANALYSIS: On June 25, 2012, Banning Playhouse Bowl Association representative, Lynette Espinoza, requested the presence of police officers for the 2012 Summer Concert Series for security purposes. The concert series is run by the Playhouse Bowl Association, which is a non-profit organization.


Based on the City's current fee schedule, the cost for one police officer, per hour, is \$65. We recommend staffing the event with two police officers. The cost of two police officers for each of the five concerts would be \$390.00. The total cost for two police officers for the entire concert series would be \$1,950.00.

FISCAL DATA: If approved by the City Council, the noted police officer fees would be waived and the overtime cost of the two police officers working the concert series would be paid with funds from the police department's general overtime account.

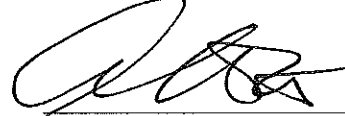
RECOMMENDED BY:


Leonard Purvis
Chief of Police

REVIEWED BY:


June Overholt
Administrative Services
Director/Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: July 10, 2012
TO: City Council
FROM: Mike West, Operations Lieutenant
SUBJECT: Animal Control Field Services Contract

RECOMENDATIONS:

“The City Council receive and place on file this Animal Control Field Services Contract between the City of Banning and the City of Beaumont.”

BACKGROUND:

On July 1, 2010, the City of Banning entered into a contract with the City of Beaumont to provide limited animal control field services to be paid on a per-call out basis. The City of Beaumont began providing this service on July 1, 2010. The attached contract is a modified version of the previous contract between the City of Banning and the City of Beaumont and extends the contract period through June 30th, 2013 with automatic renewal for one year increments, unless terminated.


STRATEGIC PLAN INTEGRATION:

Approval of this contract will provide limited animal control field services on a fee for service basis when the Beaumont Animal Control Officer is available.

FISCAL DATA:

The cost to the City for Animal Control Services for Fiscal Year 2010/11 was \$114,920. The new contract increases the per call out fee approximately 67% from \$30 to \$50. All other charges incurred by the City of Beaumont will be billed at actual costs.

SUBMITTED BY:


Mike West
Operations Lieutenant

APPROVED BY:


Andy Takata
City Manager

AGREEMENT TO PROVIDE ANIMAL CONTROL FIELD SERVICES

THIS AGREEMENT is made and effective April 1, 2012, by and between the City of Banning ("City") and the CITY OF BEAUMONT ("Beaumont").

RECITALS

A. **Beaumont** has the personnel, experience and equipment to provide animal control field services under the direction of **Beaumont's** Chief of Police.

B. The **City** has asked **Beaumont** to provide it with animal control field services. It is the purpose of this Agreement to set forth the terms and conditions by which **Beaumont** will do so.

AGREEMENT

NOW, THEREFORE, the **City** and **Beaumont** agree as follows:

1. **Scope of Basic Services.** **Beaumont** shall provide the following Basic Services:
 - a. If available, a trained animal control field service officer on duty 7 days a week, during the hours of 7am to 5pm, which officer shall be equipped with a motor vehicle suitable for the impoundment of small animals, including basic tools required to perform basic animal services. If such officer is not available, then the **City** shall be responsible for responding to calls for service;
 - b. **Beaumont** will provide **City** 24 hour access to **Beaumont** temporary kennels;
 - c. 24 hour Call Center to which **City** residents may call to schedule for animal control field services;
 - d. Access for **City** residents to periodic animal licensing clinics in **Beaumont**;
 - e. The billing of fees and charges to **City** recipients of animal control services; and
 - f. Recordkeeping services, including animal licenses.
2. **Afterhours Emergency Services.** **City** may request emergency services between the hours of 5pm and 7am from **Beaumont**. Determination of what constitutes an "emergency" shall be made by **Beaumont** based on the specific facts of the incident and the need for a "trained animal control field service officer".

Compensation. For each animal control service call-out, the **City** shall pay to **Beaumont** the sum of \$50.00 per call-out, plus any actual costs incurred including, but not limited to, the impoundment of large or wild animals, tranquilizers, veterinary services, shelter services, additional officers, animal cruelty investigations, and any additional services not included within Basic Services, billed monthly.

3. **Credit for Fees and Charges.** **Beaumont** shall attempt to collect from **City** recipients of animal control services such fees and charges as are lawfully imposed for the impoundment, boarding, adoption of animals. When collected, **Beaumont** shall remit the collected amount to the **City** monthly.

4. **Term of Agreement.** The term of this Agreement shall end on June 30, 2013, but shall automatically renew thereafter in one-year increments without further notice, unless terminated.

5. **Termination.** The **City** or **Beaumont** may terminate this Agreement at any time, upon 30-days prior written notice; provided, however, that the **City** shall pay for all services rendered to it prior to the date of termination, and **Beaumont** shall reimburse the **City** for any fees and charges collected from recipients of animal control services rendered prior to the termination date but collected thereafter.

6. **City Liaison.** In order to ensure smooth operation of the services provided hereunder, the **City** and **Beaumont** each agree to appoint a representative who shall be responsible for coordinating the implementation of this Agreement.

- a. **Beaumont Appointment:** **Beaumont** appoints the Chief of Police as its representative. The chief may be contacted as follows:

Name: Frank Coe, Chief of Police
By Telephone: 951-769-8500
By Fax: 951-769-8508
By E-mail: fcoe@beaumontpd.org

- b. The **City** appoints the following representative as its liaison:

Name: Andy Takata, City Manager
By Telephone: 951-922-3201
By Fax: 951-922-3174
By E-mail: atakata@ci.banning.ca.us

7. **Indemnification.** **Beaumont** agrees to indemnify and hold the **City**, its officers, officials, agents and employees free and harmless from any claim or liability whatsoever, including property damage, bodily injury or death, arising out of **Beaumont's** performance of this Agreement to the extent that such liability is imposed on the **City** by the provisions of California Government Code Section 895.2 or other applicable law, and **Beaumont** shall defend at its expense, including attorney's fees, the **City**, its officials, officers, agents and employees in any legal action based upon such claims or liabilities.

8. **Amendments to this Agreement.** From time-to-time, the **City** and **Beaumont** may determine that the provision of services hereunder could be improved, made more efficient or expanded. Therefore, the parties agree to meet and confer at the request of either party and to negotiate in good faith such reasonable amendments to this Agreement as the parties deem appropriate.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the following authorized officials.

CITY OF BEAUMONT

By _____

ROGER BERG, Mayor

CITY OF BANNING

By _____

DON ROBINSON, Mayor

**CITY COUNCIL AGENDA
CONSENT**

DATE: July 27, 2010
TO: Honorable Mayor and City Council
FROM: Andy Takata, City Manager
SUBJECT: Agreement to Provide Animal Control Services

RECOMMENDATION:

It is recommended that the City Council approve the Agreement between the City of Banning and the City of Beaumont to provide citywide Animal Control Field Services for the period of July 1, 2010 through June 30, 2011.

JUSTIFICATION:

There was an urgent need to secure ongoing animal control field services. Staff was directed by the City Council to bring back an agreement for said services.

BACKGROUND:

The City of Beaumont has provided Animal Control Field Services for the City of Banning since July 1, 2010. The City of Beaumont is transporting animals as necessary to the Ramona Humane Society.

As the service with the City of Beaumont matures, and if there are any changes necessary to the agreement or issues that arise, staff will bring it back to the City Council at that time for further direction.

FISCAL DATA:

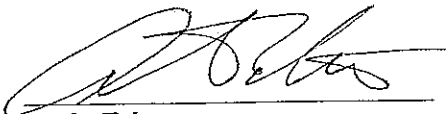
There are sufficient funds in the FY 2010-11 budget to cover the anticipated costs of this contract for these services.

100 31

ATTACHMENT

1. Animal Control Services Agreement

SUBMITTED BY:



Andy Takata
City Manager

REVIEWED BY:



Kirby Warner
Interim Administrative Services Director

RECOMMENDED BY:



Andy Takata
City Manager

ATTACHMENT 1

ATTACHMENT 1

AGREEMENT TO PROVIDE ANIMAL CONTROL FIELD SERVICES

THIS AGREEMENT is made and effective July 1, 2010, by and between the CITY OF _____ ("City") and the CITY OF BEAUMONT ("Beaumont").

RECITALS

A. **Beaumont** has the personnel, experience and equipment to provide animal control field services under the direction of **Beaumont's** Chief of Police.

B. The **City** has asked **Beaumont** to provide it with animal control field services. It is the purpose of this Agreement to set forth the terms and conditions by which **Beaumont** will do so.

AGREEMENT

NOW, THEREFORE, the **City** and **Beaumont** agree as follows:

1. Scope of Basic Services. **Beaumont** shall provide the following Basic Services:

a. A 24-hour Call Center to which **City** residents may call for animal control field services;

b. A trained animal control field service officer on duty 7 days a week, during the hours of 0700 to 1900 hours, which officer shall be equipped with a motor vehicle suitable for the impoundment of small animals, including basic tools required to perform basic animal services;

c. The conduct of periodic animal licensing clinics;

d. The billing of fees and charges to **City** recipients of animal control services; and

e. Recordkeeping services, including animal licenses.

2. Compensation. For each animal control service call-out, the **City** shall pay to **Beaumont** the sum of \$30.00 per call-out, plus any actual costs incurred including, but not limited to, the impoundment of large or wild animals, tranquilizers, veterinary services, shelter services and any additional services not included within the Basic Services, billed monthly.

3. Credit for Fees and Charges. **Beaumont** shall attempt to collect from **City** recipients of animal control services such fees and charges as are lawfully imposed for the impoundment, boarding, adoption of animals. When collected, **Beaumont** shall remit the collected amount to the **City** monthly.

103 34

4. **Term of Agreement.** The term of this Agreement shall be one year, terminating on June 30, 2011, but shall be automatically renewed thereafter in one-year increments without further notice, unless terminated.

5. **Termination.** The City or Beaumont may terminate this Agreement at any time, upon 30-days prior written notice; provided, however, that the City shall pay for all services rendered to it prior to the date of termination, and Beaumont shall reimburse the City for any fees and charges collected from recipients of animal control services rendered prior to the termination date but collected thereafter.

6. **City Liaison.** In order to ensure smooth operation of the services provided hereunder, the City and Beaumont each agree to appoint a representative who shall be responsible for coordinating the implementation of this Agreement.

a. **Beaumont Appointment:** Beaumont appoints the Chief of Police as its representative. The Chief may be contacted as follows:

By Telephone: 951-769-_____

By Fax: 951-769-_____

By E-Mail: _____

b. The City appoints the following representative as its liaison:

Name: _____

By Telephone: _____

By Fax: _____

By E-Mail: _____

7. **Indemnification.** Beaumont agrees to indemnify and hold the City, its officers, officials, agents and employees free and harmless from any claim or liability whatsoever, including property damage, bodily injury or death, arising out of the Beaumont's performance of this Agreement to the extent that such liability is imposed on the City by the provisions of California Government Code Section 895.2 or other applicable law, and Beaumont shall defend at its expense, including attorneys' fees, the City, its officials, officers, agents and employees in any legal action based upon such claims or liabilities.

8. **Amendments to this Agreement.** From time-to-time, the City and Beaumont may determine that the provision of services hereunder could be improved, made more efficient or expanded. Therefore, the parties agree to meet and confer at the request of either party and to negotiate in good faith such reasonable amendments to this Agreement as the parties deem appropriate.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the following authorized officials.

CITY OF BEAUMONT

By _____
BRIAN DE FORGE, Mayor

CITY OF _____

By _____
Mayor

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: July 10, 2012

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Approve Contract Services Agreement with ComSerCo for the City of Banning Police Department.


RECOMMENDATION: "The City Council adopt the Contract Services Agreement for the maintenance of the radio and communications system for the City of Banning Police Department for \$28,556."

JUSTIFICATION: Approval of this contract allows the Police Department to continue utilizing the services of ComSerCo to maintain its critical radio communications infrastructure.

BACKGROUND & ANALYSIS: During the course of this fiscal year, the Banning Police Department will require the continued services of ComSerCo to maintain the radio systems currently in operation by the Police Department. ComSerCo has been the contract service provider to the Police Department for several years.


FISCAL DATA: Sufficient funds are available in the Police Department's 2012-13 adopted budget.

RECOMMENDED BY:



Leonard Purvis
Chief of Police

REVIEWED BY:



June Overholt
Administrative Services
Director/Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

CONTRACT SERVICES AGREEMENT

By and Between

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

and

ComSerCo COMMUNICATIONS, INC.

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
ComSerCo COMMUNICATIONS, INC.**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 1st day of July, 2012 by and between the City of Banning, a municipal corporation ("City") and ComSerCo Communications, Inc., ("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 there for.

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 twenty-eight thousand five hundred fifty-six dollars (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:

HOWARD NEWMAN
(Name)

PRESIDENT / CEO
(Title)

LISA NEWMAN
(Name)

SECRETARY / CFO
(Title)

STEVE HALL
(Name)

SENIOR TECH / MANAGER
(Title)

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

4.2 Status of Contractor.

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

4.3 Contract Officer.

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

4.4 Independent Contractor.

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

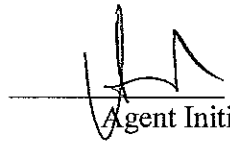
prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services 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 there from;

(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 there from.

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 One hundred and seventy five dollars (\$ 175.00) as liquidated damages for each working hour of delay, beyond their required four (4) hour response time, to arrive on scene to handle service calls for infrastructure repair, 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. Cost of damages will accrue in quarter hour increments until the Contractor arrives on scene to begin the repair.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of

any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

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

7.10 Attorneys' Fees.

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

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

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

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor

without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

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

8.3 Covenant Against Discrimination.

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

8.4 Unauthorized Aliens.

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

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

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

9.2 Interpretation.

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

9.3 Counterparts.

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

9.4 Integration; Amendment.

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

9.5 Severability.

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

9.6 Corporate Authority.

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF BANNING, a municipal corporation

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

David Aleshire, City Attorney

CONTRACTOR:

ComSerCo, Inc

By: _____

Name: HOWARD NEWMAN

Title: PRESIDENT / CEO

By: _____

Name: LEANNE NEWMAN

Title: C.F.O / Secretary

Address: 1445 SPRUCE STREET

SUITE B

RIVERSIDE, CA 92507

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 June 21, 2012 before me, Kelli R. Sword, personally appeared LEA ANNE NEWMAN, 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: _____

Kelli R. Sword



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 OR TYPE OF DOCUMENT

 TITLE(S)

- ☐ 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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On JUNE 21, 2012 before me, KELLI R. SWORD personally appeared HOWARD G. NEWMAN III, 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: Kelli R. Sword



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 OR TYPE OF DOCUMENT

TITLE(S)

☐
☐
☐
☐
☐
☐

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

EXHIBIT "A"
SCOPE OF SERVICES

I. Contractor will perform the following Services:

A. Maintenance of Banning Police Department's Communication System to include:

- 125 - Motorola HT and CDM Mobiles to include all knobs, buttons, internal components, housing, and display (unless damage is not normal wear and tear)
- 2 - RAD IP MUX (Point to Point devices)
- 1 - Motorola MTR2000 Repeater to include all external and internal components necessary for the operations of the repeater. This shall include power amplifier, combiner, isolators, multi coupler, and repeater tone panel.
- 3 - Motorola MTR2000 Receivers to include all external and internal components necessary for the operations of the receivers. This shall include power amplifier, combiner, isolators, multi coupler, and receivers' tone panel.
- 1 - Motorola Digitac Comparator Voter to include all internal and external components necessary for the operation of the Voter.
- 1 - Spectracom Clock
- 2 - Spectracom Time Servers
- 3 - Gaitronics Consoles in Mobile Command Center
- 6 - Motorola CDM1550 Radios tied to the console in Mobile Command Center.
- 3 - Dispatch Motorola Centracom consoles including all internal and external components necessary for the operation of the Consoles/Central Electronics Bank (CEB). This also includes headset jacks, footswitches, gooseneck microphones, power supply and Base Interface Module (BIM) cards.
- 5 - Motorola CDM1250 Radios tied to the Console
- 1 - SEC Power Supply to base radios

- Phone line Troubleshooting – From D-mark point on the punch block to the point of connect on the equipment.
 - B. Service for infrastructure repair shall be 24 hours, 7 days a week with a 4 hour response time.
 - C. Service for all other equipment to be performed between normal business hours Monday thru Friday, 8 am – 5 pm, as scheduled with the City of Banning Police Department.
 - D. It is the sole discretion of the City of Banning Police Department to add additional equipment to the contract in writing and maintain the equipment it so desires on contract.
 - E. Any equipment not listed under the Scope of Services will be billed at a time and material rate.
- II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:**
- A. A continuously operating Communications System for use by members of the Banning Police Department.
- 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. Hourly updates to Banning Police Department personnel when repairing infrastructure equipment necessary for the operations of the Banning Police Department's Communication System.
 - B. Every other week an update, via e-mail or letter, sent to the Banning Police Department, indicating the status of equipment, other than infrastructure equipment, in the process of being repaired and an estimated return date to the Banning Police Department.
- 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. ~~Paul Newman~~
STEVE HALL
 - B. ~~Lisa Newman~~
ORVEL WHITE, JR.

61

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

None

EXHIBIT "C"
COMPENSATION

I. Contractor shall perform the following tasks:

		RATE	TIME	SUB-BUDGET
A.	Communication System Maintenance	\$ 1,963 per Month	2011/2012 FY	\$ 1,963 per Month
B.	T&M Field Service	\$175.00/ per hr.	2011/2012 FY	Open
C.	T&M Installation Service	\$155.00/per hr.	2011/2012 FY	Open
D.	T&M Shop Technical Service	\$165.00/per hr.	2011/2012 FY	Open
E.	T&M Shop Installation Service	\$145.00/ per hr.	2011/2012 FY	Open

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.

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

VI. The City will compensate Contractor for the Services performed 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.**

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

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

		<u>Days to Perform</u>	<u>Deadline Date</u>
A.	Maintain functioning Communication System, as listed in Exhibit A	2012/2013 FY 24 hrs./7days a week	On-Call
B.	Service calls for Infrastructure Repair	Coverage 24 hrs./7 days a week/ with a 4 hour response time	On-Call
C.	Service calls for all other equip.	As scheduled with the Banning PD Monday – Friday 8am – 5 pm	On-Call

- II. Prior to the commencement of starting any work outside of the Scope of Services (identified in Exhibit A), Contractor shall provide to the Contract Officer an estimate of the time period required to perform each repair and an estimated cost of materials needed if any to accomplish the repair.**
- III. Contractor shall deliver the following tangible work products to the City by the following dates.**
- A. A continuously operating Communications System for use by members of the Banning Police Department.**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- V. The total compensation for the Services shall not exceed \$28,556.00, as provided in Section 2.1 of this Agreement.
- VI. The Contractor's billing rates for all personnel are attached as Exhibit C-1.

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: July 10, 2012

TO: City Council

FROM: Heidi Meraz, Community Services Director

**SUBJECT: INTENT TO PARTICIPATE IN A JOINT COMPREHENSIVE
OPERATIONS ANALYSIS (COA) OF THE PASS TRANSIT SYSTEM**

RECOMMENDATION: The City Council approve the participation in a joint Comprehensive Operations Analysis of the Banning and Beaumont public transit systems.

JUSTIFICATION: Pass Transit currently operates as a cooperative effort between the cities of Banning and Beaumont to provide both fixed route and paratransit services to the citizens of each respective community. A COA will provide an in-depth study of both systems individually and collectively and provide valuable information relative to system improvements and current inefficiencies.

In addition to providing local service, Pass Transit also makes regular connections to routes serviced by Riverside Transit Agency (RTA). By transferring to routes provided by RTA, passengers are able extend the area they are able to reach by utilizing public transit. Pass Transit will be timing the COA with one being done by RTA in an effort to improve coordination of all three systems.

BACKGROUND: In 2002, the cities of Banning and Beaumont entered into a cooperative agreement allowing for coordinated transit services between the two cities. Having this agreement in place has reduced the need for passengers to transfer between bus routes as it allows the two transit providers to travel in to one another's service area. Staff from both cities continues to work together and have made significant progress in providing a seamless system for passengers.

Staffs from both cities agree that having a joint COA will be a positive step in developing an overall plan that will improve Pass Transit's customer travel experience by reducing travel time, increase service frequencies and connections where possible, and to introduce new and innovative transit options.

FISCAL DATA: Not applicable at present time

66

RECOMMENDED BY:


Heidi Meraz
Community Services Director

REVIEWED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

CITY COUNCIL AGENDA

DATE: July 10, 2012

TO: City Council

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: Resolution No. 2012-55, "Amending the Lease Agreement with Fire Memories, Inc. for the use of property located at 5261 W. Wilson Street to house the Temporary Fire Museum"

RECOMMENDATION: That the City Council adopt Resolution No. 2012-55, amending the Lease Agreement with Fire Memories, Inc. to continue the lease of property on a month-to-month basis to house the Temporary Fire Museum located at 5261 W. Wilson Street.

JUSTIFICATION: In order to continue housing the Temporary Fire Museum at 5261 W. Wilson on a month-to-month basis it is necessary to extend the agreement.

BACKGROUND/ANALYSIS: On August 23, 2011 City Council approved Resolution No. 2011-74, "Authorizing the City Manager to enter into a Lease Agreement with Fire Memories, Inc. for a Temporary Fire Museum on City-Owned property located at 5261 W. Wilson Street / APN 408-134-009".

Per the Lease Agreement between the City and Fire Memories, Inc., (FMI) the term of the agreement was for a one year period beginning August 23, 2012. The Fire Museum Board of Directors submitted the attached letter requesting that the City extend the lease for an additional 12 months. It should also be considered at this time that it may be necessary for the City to utilize the facility in the near future to house Fire Station staff and services currently operating out of the facility located at 3900 West Wilson Street. Consequently, at this time, staff respectfully requests to extend the term of the agreement to a month-to-month basis. This will allow FMI to continue to utilize the facility and operate as a non-profit fire museum for the collection, preservation, and exhibition of firefighting equipment of all types and ages for historical, educational, and safety purposes. If approved, this lease may be terminated upon a thirty (30) day written notice by either party. All other terms and provisions of the original Agreement dated August 23, 2011 will remain in full force and effect upon approval of this Amendment.

Staff recognizes that FMI is continuing their efforts to work with the City of Beaumont and the Beaumont Cherry Valley Parks and Recreation District to secure a permanent location.

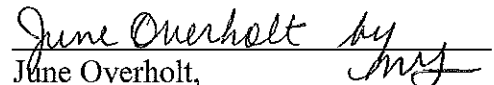
FISCAL DATA: The revenue for this lease "Not to Exceed" one (1) dollar per year. There is an unquantifiable benefit to the community and the public by having a fire museum open to the public.

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" - Letter submitted by the Fire Museum Board of Directors dated June 18, 2012.
2. Exhibit "B" - City Council Resolution No. 2012-55
3. Exhibit "C" - Original Contract Services Agreement between the City of Banning and Fire Memories, Inc.
4. Exhibit "D" - First Amendment to the Lease Agreement between the City of Banning and Fire Memories, Inc.

EXHIBIT “A”

**LETTER FROM THE FIRE MUSEUM BOARD
DATED JUNE 18, 2012**



FIRE MEMORIES MUSEUM

5261 W. Wilson St. • Banning, CA 92220 • (951) 845-9500 • www.firememories.org

June 18, 2012

Andy Takata, City Manager
c/o City of Banning
99 East Ramsey Street
Banning, CA 92220

Dear Mr. Takata:

On behalf of the Board of Directors and myself of Fire Memories Museum, we would like to ask that the City of Banning please extend our current lease at Fire Station 2 at 5261 W. Wilson Street for another 12 months with an additional opportunity to extend after that period of time with the same conditions. (My only concern is Article 5 where the current lease talks about Fire Memories paying the property taxes. You and I discussed that statement last year and you said that clause should not be in the lease).

We have had an enjoyable time in our current location and have had many visitors from many different places. Guests have included many children's groups; scouts, home schooled children, Moms groups with their children, church school groups, along with many adult groups; the Red Hat Society, senior citizen groups, car clubs, U.S. Forest Service, Riverside County Hazardous Materials teams and the list goes on. We have had museum directors come talk with us, city staff from small town near Mobile, Alabama wanting to start a museum, nationally known authors for Firehouse magazine, fire personnel from across the country and other guests from as far away as England. It is our estimate that we have had well over 2,000 visitors since the opening of Fire Memories Museum. All of these guests along with the many outside activities Fire Memories Museum participated in within the San Gorgonio Pass. We have had a very busy year and a great time doing all of it!

Sincerely,

Douglas W. Hammer

Douglas W. Hammer
CEO Fire Memories Museum

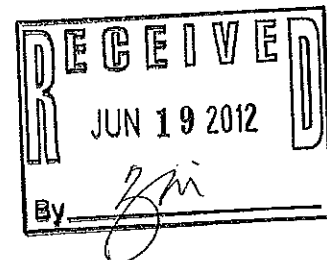


EXHIBIT “B”
CITY COUNCIL RESOLUTION NO. 2012-55

RESOLUTION NO. 2012-55

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE LEASE AGREEMENT WITH FIRE MEMORIES, INC. FOR THE USE OF PROPERTY TO HOUSE THE TEMPORARY FIRE MUSEUM LOCATED AT 5261 W. WILSON STREET

WHEREAS, on August 23, 2011 City Council approved Resolution No. 2011-74, "Authorizing the City Manager to enter into a Lease Agreement with Fire Memories, Inc. for a Temporary Fire Museum on City-Owned property located at 5261 W. Wilson Street / APN 408-134-009"; and

WHEREAS, the current Lease Agreement dated August 23, 2012 was for a one (1) year period; and

WHEREAS, the City desires to continue the Lease Agreement with Fire Memories, Inc. on a month-to-month basis and termination of this Amendment may be granted upon a thirty (30) day written notice by either party; and

WHEREAS, all other terms and provisions of the original Agreement dated August 23, 2012 will remain in full force and effect upon approval of this Amendment.

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

SECTION 1. The First Amendment to the Lease Agreement with Fire Memories, Inc. for continued use of the property located at 5621 W. Wilson to house the Temporary Fire Museum is hereby approved.

SECTION 2. The City Manager is authorized to execute the contract documents between the City of Banning and Fire Memories, Inc. effective August 23, 2012. 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 10th day of July 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. 2012-55 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 10th day of July, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT “C”

LEASE AGREEMENT DATED AUGUST 23, 2011

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this 23rd day of August, 2011, by and between the **CITY OF BANNING**, a municipal corporation ("CITY"), and **FIRE MEMORIES, INC.**, a California Public Benefit Corporation ("FMI").

RECITALS

WHEREAS, CITY is the owner of that real property, including the building located thereon, at 5261 W. Wilson Street, Banning, CA (APN 408-134-009) (the "Premises"); and

WHEREAS, the FMI operates as a non-profit fire museum for the collection, preservation, and exhibition of fire fighting equipment of all types and ages for historical, educational, and safety purposes. Fire Memories museum allows everyone to experience the historical apparatus and equipment of firefighting and brings a sense of pride to this career of dedication to saving lives; and

WHEREAS, the FMI is currently seeking a location for a Pass Area museum dedicated to the collection, preservation, and exhibition of fire fighting equipment and fire education (the "Museum"); and

WHEREAS, CITY is willing to make the Premises available to FMI for purposes of FMI's operation and maintenance of the Museum; and

WHEREAS, it is the intent of the parties that the Premises will be Leased to the FMI for its exclusive use and purpose for a limited period not to exceed one year from the date this Lease is mutually executed by the parties hereto (the "Effective Date").

AGREEMENT

NOW, THEREFORE, the parties incorporate the Recitals as set forth herein and agree as follows:

ARTICLE 1. Term and Termination

A. The initial term of this Lease is for 12 months from the Effective Date unless sooner terminated as provided for herein. CITY shall maintain the right to extend this Lease at its sole discretion.

B. Notwithstanding any provisions to the contrary in this Lease, CITY may terminate this Lease before the expiration of the stated term if (i) FMI does not receive approval by the appropriate governmental authority to continue to occupy the premises; (ii) if such approval has been granted, but is subsequently withdrawn by such governmental authority due to budgetary constraints, or (iii) the FMI fails to continue to operate the FMI program for which the Premises were originally Leased (iv) either party elects to terminate this Lease by notice delivered to the other party at least thirty days (30) prior to such termination. In the event of the occurrence of any of the forgoing, CITY may, in its sole discretion, give written notice to FMI, to terminate this Lease and neither party shall have any further obligation to the other hereunder.

ARTICLE 2. Lease

A. CITY hereby Leases to FMI, and FMI hereby rents from CITY, all of those certain Premises, which are specifically identified on the "Site Map", attached hereto as "Exhibit A," and incorporated herein by this reference, on the terms and conditions contained in this Lease.

B. Except as otherwise specified in this Lease, CITY shall provide FMI possession and use of the space identified in the Site Map. FMI's possession of the Premises shall be shared with, and subject to, the CITY's right at all times to store CITY equipment and materials on the Premises; however, the CITY hereby warrants that such storage of CITY materials shall not be undertaken in such a manner as to unreasonably interfere with FMI's operations specifically permitted by this Lease.

C. CITY grants to FMI, for the benefit of FMI and its employees, suppliers, shippers, contactors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by CITY under the terms hereof or under the terms of any other rules and regulations or restrictions governing the use of the Premises. Under no circumstances shall the right herein granted to the use of the Common Areas be deemed to include the right to store any property, temporarily or permanently in the Common Areas. Any such storage shall be permitted only by the prior written consent of CITY's designated agent, which consent may be revoked at anytime. In the event that unauthorized storage shall occur then CITY shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to FMI, which cost shall be immediately payable upon demand by CITY.

D. CITY or such other person(s) as CITY may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for management, safety, care and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or members of the public and invitees to the Premises. FMI agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform.

E. CITY shall have the right, in CITY's sole discretion, from time to time to perform the following:

(1) To make changes to the Common Areas, including without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways so long as the Premises Leased are not altered;

(2) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(3) To designate other land outside the boundaries of the Premises to be part of the Common Areas;

(4) To add additional buildings and improvements to the Common Areas;

(5) To use the Common Areas while engaged in making additional improvements, repairs, or alterations to the Premises, or any portion thereof; and

(6) To do or perform such other acts or make such other changes in, to or with respect to the Common Areas as CITY may, in the exercise of sound business judgment, deem to be appropriate.

F. The term "Common Areas" is defined as all areas and facilities within the exterior boundary line of the Premises yet reserved for shared public use and open to the public and/or reserved to other tenants or entities with an easement or other right of non-exclusive access over the Premises, including but not limited to parking areas, utility raceways and installations, loading and unloading areas, trash areas, roadways, walkways, sidewalks, driveways and landscaped areas.

ARTICLE 3. Minimum Rent

This Lease is entered into for good and valuable consideration for the period commencing on the Effective Date and by which FMI shall pay to CITY as and for consideration the yearly rental amount of one dollar (\$1.00). The rent shall be payable in advance of the first day of the term of this Lease.

ARTICLE 4. Utilities

During the Term stated herein, FMI shall be solely responsible for and shall promptly pay, before delinquency, all charges or assessments for water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises at the rates charged by the supplying utility companies.

ARTICLE 5. Taxes

FMI shall pay all personal property taxes and all real property taxes attributable to the Premises. FMI shall have the sole obligation to pay any taxes, fees and assessments, plus applicable penalties and interest, which may be imposed by law and arise out of FMI's leasehold interest hereunder. FMI shall indemnify, defend and hold harmless CITY against any and all such taxes, fees, penalties or interest assessed, or imposed against CITY hereunder. In the event FMI fails to timely pay any tax, assessment, fee, penalty or interest, CITY, at its option, shall have the right to pay such charge and treat such payment as additional rent to be charged to FMI and paid by FMI to CITY within (5) days of receipt of notice from CITY.

ARTICLE 6. Use of Premises

A. FMI will occupy and use the Premises exclusively and solely for the purposes of storing and/or displaying collectible and educational memorabilia relating to the firefighting profession. FMI's permissible uses of the Premises include the operation of the Museum, which Museum shall be open to the public from the hours of 11:00 a.m. to 4:00 p.m. Thursdays, Fridays and Saturdays; these hours of operation may be extended or changed with the prior written consent of the City Manager or his/her designee. FMI's permitted uses of the Premises may include fundraising and educational events, tours and programs, subject to FMI's compliance with all CITY ordinances (such as regulations for special events) and, if an event is planned for

hours other than the regular designated hours of Museum operation, FMI shall obtain prior written consent from the City Manager for such event. The Museum shall operate for purposes of educating the public about the history and heritage of the firefighting profession, fire safety and prevention, serving as a memorial to firefighters and their families, and facilitating community support for fire departments. FMI shall not use, or permit the Premises, or any part thereof, to be used for any purposes other than the purposes for which the Premises are hereby Leased.

B. FMI shall not commit any acts on the Premises, nor use the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. FMI shall, at FMI's own cost and expense, comply with all requirements of CITY's insurance carriers that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies.

C. FMI, at its sole cost, shall comply with any and all laws concerning the Premises or FMI's use of the Premises, including, without limitation, the obligation at FMI's cost to alter, maintain or improve the Premises in compliance with and conformity with all laws relating to the condition, use or occupancy of the Premises during the term (including the Americans With Disabilities Act).

D. If FMI's use of the Premises results in a rate increase for the Premises, FMI shall pay within ten (10) days of billing from CITY, as additional rent, a sum equal to the additional premium caused by such rate increase.

E. FMI agrees not to use the Premises for any immoral or unlawful purpose.

F. FMI shall not commit any waste or any public or private nuisance upon the Premises.

G. FMI shall comply with all laws, rules, and orders of all federal, state and municipal governments or agencies that may be applicable to use of the Premises.

H. FMI shall at all times keep the Premises in a neat and attractive appearance.

I. FMI's use of the Premises is subject to: (i) the effect of any covenants, conditions, restrictions, easements, development agreements, mortgages or deeds of trust, ground leases, rights of way, and other matters or documents of record now or hereafter recorded, (ii) the effects of any zoning laws of the CITY, county and state where the Premises are situated.

J. FMI agrees (i) that as to its leasehold estate it, and all persons in possession or holding under it, will conform to and will not violate said matters of record, and (ii) that this Lease is and shall be subordinate to said matters of record and any amendments or modifications thereto.

ARTICLE 7. Condition of Premises

FMI acknowledges that as of the date of this Lease, FMI has inspected the Premises and all improvements on the Premises and that the Premises and improvements are in good order, repair, and condition and suitable for FMI's uses permitted by this Lease. The parties agree that any additional improvements or alterations to the Premises, not otherwise specified herein, must

be authorized by CITY in writing and performed at the sole cost and expense of FMI.

ARTICLE 8. Repairs and Maintenance

A. FMI, at its sole cost and expense, shall keep the Premises in reasonable order, condition and repair and shall make all replacements necessary to keep the Premises in such condition. FMI, at its expense, shall repair promptly any damage to the Premises caused by FMI or its agents, employees, or invitees, or caused by the installation or removal of FMI's personal property. All replacements shall be of a quality equal to or exceeding that of the original. Should FMI fail to make these repairs and replacements or otherwise so maintain the Premises for a period of fifteen (15) days after written demand by CITY, or should FMI commence, but fail to complete, any repairs or replacements within sixty (60) days after written demand by CITY, CITY may enter the Premises and make such repairs or replacements and FMI shall pay to CITY the costs incurred by CITY in making such repairs or replacements together with interest thereon at the maximum rate permitted by law from the date of commencement of the work until repaid. CITY shall be responsible for exterior maintenance of the Premises.

B. FMI shall promptly replace, at its expense, any and all plate and other glass damaged or broken from any cause whatsoever (except CITY's direct act) in and about the Premises. FMI shall have the option either to insure this risk or self-insure.

C. FMI agrees to deliver to CITY physical possession of the Premises at the end of this Lease's term, or any extension of the term, in good condition and repair, reasonable wear and tear and loss by fire or other casualty or by earthquake or other act of God excepted.

ARTICLE 9. FMI Improvements and Alterations

A. FMI shall be responsible for constructing any improvements necessary to use the premises for the purpose of facilitating the conduct of administrative services at its sole cost and expense (the "FMI's Work"). FMI shall have sole responsibility for all architectural and space planning involved in FMI's Work.

B. All construction work required or permitted by this Lease shall be approved by CITY in writing and done in a good and workmanlike manner, and in compliance with all applicable laws and ordinances, regulations, and orders of governmental authority and insurers of the Premises.

C. Except for FMI's Work approved by CITY by written agreement, FMI shall not make any alterations to the building and improvements on the Premises. Approval may be conditioned upon the receipt by CITY of a set of plans and specifications for the alterations no later than thirty (30) days prior to the scheduled construction of the alterations. FMI will indemnify and defend CITY for all liens, claims, or damages caused by remodeling, improvements, additions, alterations, and major repairs. CITY agrees, when requested by FMI, to execute and deliver any applications, consents, or other instruments required to permit FMI to do this work or to obtain permits for the work.

D. Except as set forth in this section, all alterations and improvements made to the Premises shall become the property of CITY and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this Lease, including any renewals or extensions.

E. At least ten (10) days before any construction commences or materials are delivered for any alterations that FMI is making to the Premises, FMI shall give written notice to CITY as to when the construction is to commence or the materials are to be delivered. CITY shall then have the right to protect CITY and CITY's interest in making the alterations; provided, however, that it shall be FMI's duty to keep the Premises free and clear of all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Premises at the request of FMI.

F. FMI will not at any time permit any mechanics', laborers, or material men's liens to stand against the Premises for any labor or material furnished to FMI or claimed to have been furnished to FMI or FMI's agents, contractors, or sub-contractors, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of FMI; provided, however, that FMI shall have the right to contest the validity or amount of any lien or claimed lien, upon giving to CITY a letter executed by FMI assuring that the lien or claimed lien will be paid, when and to the extent that the lien is finally determined to be valid and owing. FMI's right, however, to contest these liens shall not extend beyond the point where CITY's title to the Premises could be lost. On final determination of the lien or claim of lien, FMI will immediately pay any final judgment rendered, with all property costs and charges, and shall have the lien released or judgment satisfied at FMI's own expense. If FMI fails to pay the judgment promptly or otherwise fails to prevent any sale, foreclosure, or forfeiture of the Premises because of a lien, CITY shall have the right, upon five (5) days' written notice to FMI, to pay or prevent this action, and the amount paid by CITY shall be immediately due and payable to CITY.

ARTICLE 10. Signs

A. FMI may place and maintain signs on the Premises provided, however, that FMI shall first obtain any necessary governmental permits' or licenses therefore and maintain it in good appearance' and repair at all times during this Lease. At the expiration or termination of this Lease, any of the items mentioned in this section that are not removed from the Premises by FMI may, without damage or liability, be destroyed by CITY.

B. Any trade fixtures that are not removed from the Premises by FMI within sixty (60) days after the Termination Date shall be deemed abandoned by FMI and shall automatically become the property of CITY as owner of the real property to which they are affixed.

ARTICLE 11. Entry

FMI shall permit CITY or CITY's agents, representatives, or employees to enter the Premises at all reasonable times and upon reasonable prior notice to inspect the Premises to determine whether FMI is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect CITY's interest in the Premises under this Lease or to perform CITY's duties under this Lease. CITY's entry and any work conducted by CITY or its contractors shall be performed without interruption or unreasonable interference with FMI's ability to operate its Museum and to remain open to the public for business.

ARTICLE 12. Surrender of Premises; Holding Over

On the expiration or termination of this Lease, FMI shall promptly surrender and deliver the Premises to CITY in as good condition as they are now at the date of this Lease, reasonable wear and tear excepted.

At the end expiration of this Lease, should FMI hold over for any reason, it is agreed that in absence of a written agreement to the contrary, that tenancy shall be form month-to-month only and not a renewal of this Lease, or an extension for further term. FMI shall pay monthly rent in an amount established by CITY, and the month-to-month tenancy shall be subject to every other term, covenant and condition in this Lease that is consistent with and not contrary to a month-to-month tenancy.

ARTICLE 13. Damage and Destruction

A. If the building or other improvements constructed on the Premises are damaged or destroyed, whether partially or entirely, by any cause, CITY may elect to repair, restore, or reconstruct the damaged or destroyed building and other improvements so that the condition and quality of the new building and other improvements shall be as near as reasonably possible to the condition and quality immediately prior to the damage or destruction to the extent that proceeds of insurance are available. Damage to or destruction of any portion of the building except the premises occupied by FMI, fixtures, or other improvements on the Premises by fire, the elements, or any other cause shall not terminate this Lease or entitle FMI to surrender the Premises or otherwise affect the respective obligations of the parties, any present or future law to the contrary notwithstanding. However, if the building fixtures, or other improvements on the Premises are totally destroyed or damaged or the CITY does not elect to repair the Premises and the Premises are partially or wholly unsuitable or inadequate for the purposes for which FMI was using the Premises prior to the destruction or damage, the CITY at its sole option may terminate the Lease.

B. If the Premises are damaged or destroyed in whole or in part and the available insurance proceeds are equal to the cost of repair, less any applicable deductible amount, CITY may, at its option, proceed with due diligence to have plans and specifications prepared, to commence rebuilding, reconstruction, or restoration as promptly as possible after the occurrence of the event causing the damage or destruction, and thereafter to diligently complete the work. If the insurance proceeds are not equal to the cost of repair, CITY may, but shall not be obligated to do whatever may be necessary for the rebuilding, recordation, repair, or restoration of any building or improvements damaged or destroyed at its own cost and expense.

C. FMI shall give prompt notice to CITY in case of fire or accidents in the Premises or of any damage or defects in the Premises or any fixtures or equipment therein.

ARTICLE 14. Waivers of Liability & Indemnities.

Except as may be expressly provided to the contrary in this Lease, CITY shall not be liable for any damage to property of FMI, or of others, located in, on or about the Premises, nor for the loss of or damage to any property of FMI or of others by theft or otherwise. CITY shall not be liable to FMI, FMI's employees or representatives for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other places or by dampness or by any other cause of whatsoever nature, except as may be proximately caused by an act or omission of CITY or its employees, contractors or agents. CITY shall not be liable to FMI, FMI's employees or representatives for any such damage caused by other occupants or persons in the Premises, or the public, or caused by operations in construction of any private, public or quasi-public work, that are not proximately caused by CITY, or its employees, contractors or agents. CITY shall not be liable for any latent defects in the Premises or in the buildings thereon at any time after the

Effective Date of this Lease. All property of FMI kept or stored on the Premises shall be so kept or stored at the sole risk of FMI and FMI shall hold CITY harmless from any claims arising out of damage to the same, including subrogation claims by FMI's insurance carriers, unless such damage shall be proximately caused by the acts or omissions of CITY, or its employees, contractors or agents.

To the end of ensuring non-liability of the CITY under this Lease, FMI shall indemnify and hold CITY, its employees and agents, harmless from and against any and all claims, actions, costs, expenses, liabilities, damages, penalties and demands whatsoever, together with attorneys' fees and expenses arising out of or concerning the activities of FMI under this Lease, including but not limited to injury or death or damage to persons or property of invitees, agents, or employees of CITY, FMI or others, occurring in, on or about the Premises except if caused by the negligence or gross misconduct of CITY or its agents. If any action or proceeding in connection with any such matters is brought against the CITY, notice shall be given to FMI and FMI shall be furnished with a copy of any papers served. CITY shall have the right to defend any action or proceeding, employing legal counsel selected by it. CITY shall not be responsible or liable in any way for the presence of any toxic or Hazardous Materials (hereinafter defined) on the Premises, including compliance with any requirements imposed by applicable governmental authorities. Termination of this Lease notwithstanding, the provisions of this Section shall continue in full force and effect as to any claims or other matter listed therein, without limitation in time by virtue or any other provisions of this Lease.

For purposes of this Lease, "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority (other than the City or Agency), the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (B) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (L) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601); (M) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; or (N) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning

Hazardous Materials and/or underground storage tanks, as now, or at any time hereafter, in effect.

ARTICLE 15. Assignment and Subletting

A. FMI shall not assign this Lease in whole or in part, nor sublet all or any part of the Premises, without the prior written consent of CITY. The consent by CITY to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this Lease is assigned by FMI, or if the Premises or any part thereof are sublet or occupied by any person or entity other than FMI, CITY may collect rent from the assignee, subtenant or occupant, for its own use and purpose and terminate this Lease. Collection shall not be deemed a waiver on the part of CITY, or the acceptance of the assignee, subtenant or occupant as FMI, or a release of FMI from the further performance by FMI of covenants on the part of FMI herein contained.

B. Irrespective of any assignment or Lease, FMI shall remain fully liable under this Lease and shall not be released from performing any of the terms, covenants and conditions of this Agreement.

ARTICLE 16. Involuntary Assignment.

No interest of FMI in this Lease shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment: (a) if FMI is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which FMI is bankrupt; or, if FMI is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; (b) if a writ of attachment or execution is levied on this Lease; or (c) if, in any proceeding or action to which FMI is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall constitute a default by FMI, and Owner shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of FMI.

ARTICLE 17. Insurance

A. **Liability Insurance Coverage.** FMI, at its sole expense, shall obtain prior to entering onto the Property and/or commencing any activity described in this Lease, and shall maintain or cause to be maintained during the entire term of this Lease, comprehensive general liability insurance, including, but not limited to, owned and non-owned vehicle liability, personal injury, blanket contractual, broad form property damage, and product/completed operations liability coverage shall be on a per occurrence basis and shall have limits of not less than \$1,000,000.00 (one million dollars) combined single limit per occurrence for bodily injury, personal injury and property damage liability.

B. FMI and all persons performing work for, or on behalf of FMI, including, but not limited to, their contractors or sub-contractors, shall, at FMI's own cost and expense, procure and maintain during the performance of the said work, a policy of worker's compensation insurance and employer's liability insurance in such amount as to willfully comply with the laws of the State of California.

C. All of the above policies of insurance shall name CITY, its officers, employees, and agents as additional insureds. In the event any of said policies of insurance are canceled, FMI shall, prior to the cancellation date, submit new evidence of insurance.

ARTICLE 18. Default

A. **FMI's Default.** The occurrence of any of the following shall constitute a default by FMI: (i) abandonment and/or vacation of the Premises; (ii) failure to operate in the Premises for fifteen (15) consecutive days; (iii) failure to perform any nonmonetary provision of this Lease if the failure to perform is not cured within ten (10) days after notice has been given to FMI; or (iv) failure to timely deliver an estoppel certificate as required by this Lease.

B. Notices given under this Section shall not be deemed a forfeiture or a termination of this Lease unless CITY so elects in the notice. Notices given under this Section shall be in lieu of, and not in addition to, any statutory notice required by law.

C. **CITY's Remedies.** CITY shall have the following remedies if FMI commits a default:

1. CITY can continue this Lease in full force and effect after FMI's default and abandonment, and the Lease will continue in effect as long as CITY does not terminate FMI's right to possession, and CITY may enforce all CITY's rights and remedies under the Lease. During the period FMI is in default, CITY can enter the Premises and re-let them, or any part of them, to third parties.

2. CITY can terminate FMI's right to possession of the Premises at any time. No act by CITY, other than giving notice to FMI, shall terminate this Lease. Acts of maintenance, efforts to relet the Premises or the appointment of a receiver on CITY's initiative to protect CITY's interest under this Lease shall not constitute a termination of FMI's right to possession. On termination, CITY has the right to recover from FMI any and all amounts and court costs, necessary to compensate CITY for all detriment proximately caused by FMI's default.

3. CITY, at any time after FMI commits a default, can cure the default at FMI's cost. If CITY at any time, by reason of FMI's default, pays any sum or does any act that requires the payment of any sum, the sum paid by CITY shall be due immediately from FMI to CITY at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by CITY until CITY is reimbursed by FMI. The sum, together with interest on it, shall be additional rent.

4. Upon the occurrence of an Event of Default, CITY shall also have the right, with or without termination of this Lease, to re-enter the Premises and remove all persons and property from the Premises. CITY may store the property removed from the Premises in a public warehouse or elsewhere at the expense and for the account of FMI.

These remedies are not exclusive; they are cumulative and in addition to any remedies CITY may have now or later allowed by law.

D. **Default by CITY.** If CITY fails to perform any of the covenants or conditions required on its part to be performed pursuant to this Lease, where such failure continues for a period of thirty (30) days after receipt of written notice specifying the nature and extent of such

default in detail (provided, however, that if such default is of a nature that it cannot reasonably be cured within thirty (30) day period, CITY shall have such additional time as may be required to effect such cure provided CITY commences the cure within such 30 day period), CITY's liability shall be limited to CITY's interest in the Premises. CITY shall not be liable to FMI for any damages sustained as a direct result of such default. Neither CITY nor any of its officers, employees, or agents shall be personally liable.

ARTICLE 19. Waiver of Rights of Redemption.

FMI expressly waives any and all rights of redemption granted by or under any present or future laws in the event of FMI being evicted or dispossessed for any cause, or in the event of Owner obtaining possession of the Premises, by reason of the violation by FMI of any of the covenants or conditions of this Lease, or otherwise.

ARTICLE 20. Waiver of Breach

Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or other term of this Lease.

ARTICLE 21. Successors and Sale of Premises

A. **Successors and Assigns.** Except as provided in this Lease, all rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of said parties. No rights, however, shall inure to the benefit of any assignee of FMI unless the assignment to such assignee has been approved by CITY in writing as provided for herein.

B. **Sale of Premises.** In the event CITY shall sell, convey, transfer or exchange the Premises, FMI agrees to recognize and attorn to the purchaser or transferee, as the CITY hereunder and CITY shall be and is hereby relieved and released from any liability under any and all of its covenants and obligations under the Lease arising out of any act, occurrence or event arising after such sale, conveyance, transfer or exchange.

ARTICLE 22. Miscellaneous

A. **Governing Law/Venue.** This Lease shall be governed by and construed in accordance with California Law. In the event of litigation the appropriate venue shall be the San Bernardino Superior Courts.

B. **Compliance with Laws.** CITY shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force pertaining to the use of the Property; and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the general plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force, or which shall hereinafter be in force.

C. **Amendments.** This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

D. **No Brokerage Commission.** Each party agrees and acknowledges that no commission is due any real estate broker in connection with this Lease.

E. **Rights Cumulative.** The rights and remedies of CITY specified in this Lease shall be cumulative and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of CITY and FMI in addition to any other rights and remedies provided by law.

F. **No Partnership.** CITY does not, in any way or for any purpose, become a partner of FMI in the conduct of its business, or otherwise, or joint venture or a member of a joint enterprise with FMI by reason of this Lease. The provisions of this Lease relating to the Percentage Rent payable hereunder are included solely for the purposes of providing a method whereby Rent is to be measured and ascertained.

G. **Force Majeure.** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium, riots, insurrection, war or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays due to financial inability), then performance of such act shall be excused for the period of such delay.

H. **Notices.** Any notice to either the parties hereto required or desired under the provisions and conditions of this instrument shall be given in writing by certified mail, registered mail, or by personal delivery addressed to the party for whom it is intended at the following addresses. Notices will be deemed effectively given, in the case of personal delivery, upon receipt (or if receipt is refused, upon attempted delivery), and in the case of mailing, three (3) days following deposit into the custody of the United States Postal Service. The notice addresses of the parties are as follows:

To CITY: City of Banning
99 Ramsey Street
Banning, CA 92220
Attn: City Manager
Fax: (951) 922-3174

With a copy to: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 400 / 700
Irvine, California 92612
Attn: David J. Aleshire

To FMI: FIRE MEMORIES INC.
P.O. BOX 817
BANNING CA 92220
Attn: DOUGLAS HANMER

Either party, FMI or CITY, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

I. **Captions and Section Numbers.** The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

J. **FMI Defined, Use of Pronoun.** The word "FMI" means each and every person or party mentioned as a FMI herein, be the same one or more; and if there shall be more than one FMI, any notice required or permitted by the terms of this Lease may be given by or to anyone thereof, and shall have the same force and effect as if given by or to all thereof. The persons signing as FMI shall be jointly and severally liable. The use of the neuter singular pronoun to refer to CITY or FMI shall be deemed a proper reference even though CITY or FMI may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where FMI is a corporation, association, partnership, or individual, male or female, shall in all instances be assumed as though in each case fully expressed.

K. **Partial Invalidity.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent, be invalid or unenforceable, the remainder of this Lease, or the application for such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

L. **Recording.** FMI shall not record this Lease or a memorandum thereof.

M. **Legal Expenses.**

1. In the event that any time during the Term either CITY or FMI shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, or engage an attorney to enforce such provision then, and in that event, the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the actual expenses of attorneys' fees and disbursements incurred therein by the successful party.

2. The successful party in such suit shall be entitled to its costs of suit and actual attorneys' fees whether or not such action is prosecuted to judgment. "Successful party" within the meaning of this Section shall include, without limitation, a party who brings an action against the other or who defends against an action brought by the other and whose position is substantially upheld.

N. **Authority.** If FMI is a corporation or partnership, each individual executing this Lease on behalf of such entity represents or warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such entity and that such entity shall be bound by all the terms and provisions hereof.

O. **Severability.** In the event that any provision of this Lease shall be held to be invalid, the same shall not affect, in any respect whatsoever, the validity of the remainder of this Lease.

P. **Run With the Land.** The covenants contained in this Lease shall run with the land and shall be binding on successors and assigns of the parties.

Q. **Corporate Authority.** The persons executing this Lease 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 Lease on behalf of said party, (iii) by so executing this Lease, such party is formally bound to the provisions of this Lease, and (iv) the entering into this Lease does not violate any provision of any other Lease to which said party is bound.

88

R. **Entire Agreement.** This Lease and the Exhibits attached hereto and forming a part hereof, set forth all the representations, covenants, promises, agreements, conditions and understandings between CITY and FMI concerning the Premises and there are no representations, covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Any subsequent alteration, amendment, change or addition to this Lease must be in writing, signed by CITY and FMI.

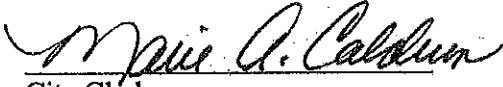
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their respective duly authorized officers or representatives as of the date first set forth above.

CITY OF BANNING, a municipal corporation

By: 

Andrew Takata, City Manager

ATTEST:


City Clerk

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP


City Attorney

FIRE MEMORIES, INC., A California Public
Benefit Corporation

By: 

Douglas W. Hammer, CEO

EXHIBIT “D”
FIRST AMENDMENT

**FIRST AMENDMENT TO THE LEASE AGREEMENT FOR THE USE OF PROPERTY
LOCATED AT 5621 W. WILSON STREET BETWEEN THE CITY OF BANNING,
CALIFORNIA AND FIRE MEMORIES, INC.**

THIS FIRST AMENDMENT TO THE LEASE AGREEMENT ("First Amendment") by and between the CITY OF BANNING ("City") and FIRE MEMORIES, INC. ("FMI") is effective as of this 24th day of August 2012.

RECITALS

A. The City is the owner of the real property, including the building located thereon, at 5261 W. Wilson Street, Banning, CA (APN 408-134-009) (the "Premises"); and

B. FMI operates a non-profit fire museum for the collection, preservation, and exhibition of firefighting equipment of all types and ages for historical, educational, and safety purposes. Fire Memories museum allows everyone to experience the historical apparatuses and equipment of firefighting and brings a sense of pride to this career of dedication to saving lives; and

C. The City and FMI entered into a Lease Agreement approved by the City Council on August 23, 2011 for the use of property located at 5621 W. Wilson Street ("Lease") to house the Temporary Fire Museum ("the Museum") which is dedicated to the collection, preservation, and exhibition of firefighting equipment and fire education; and

D. FMI is currently seeking to extend its occupancy and operations in the Pass Area; and

E. The CITY is willing to continue to make the existing Premises available to FMI for the purpose of FMI's operation and maintenance of the Museum; and

F. It is the intent of the parties that the Premises will be leased to FMI for its exclusive use and purpose to be continued for a period not to exceed twelve (12) months from the effective date of the Amendment to this Lease and such that either party shall have the option to elect to terminate the Lease Agreement by notice delivered to the other party at least thirty (30) days prior to such termination under Article 1 (B) of the Lease.

G. City and FMI wish to amend the Lease in accordance with the terms herein.

H. This amendment to the Lease is made in accordance with Article 1(A) of the Lease, which provides that "CITY shall maintain the right to extend this lease at its sole discretion."

LEASE AGREEMENT

NOW, THEREFORE, it is hereby agreed that the recitals contained above are incorporated herein by reference and the Lease is hereby amended in the following particulars only:

Section 1. Amendment to Article 1 (A) of the Lease. Article 1(A) of the Lease is hereby deleted in its entirety and replaced as set forth below:

"A. The term of this Lease is for twelve (12) months from the Effective Date of this First Amendment, August 23, 2012, unless sooner terminated as provided for herein. CITY shall maintain the right to extend this Lease at its sole discretion."

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

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

FMI represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Lease 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 Lease.

City represents and warrants to FMI that, as of the date of this Amendment, FMI is not in default of any material term of the Lease 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 Lease.

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

Section 5. 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

IN WITNESS WHEREOF, City and FMI have entered into this First Amendment effective August 23, 2012.

By: _____
Don Robinson, Mayor

ATTEST:

By: _____
Marie Calderon, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
David J. Aleshire, City Attorney

FIRE MEMORIES, INC, A California Public Benefit
Corporation

By: _____
Douglas W. Hammer, CEO

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: July 10, 2012

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Resolution No. 2012-58. Authorize the purchase of one (1) 2011 Ford Crown Victoria Police Interceptor sedan from Wondries Fleet Group in the amount of \$24,793.

RECOMMENDATIONS: “Adopt Resolution No. 2012-58 authorizing the purchase of one (1) Ford Crown Victoria Police Interceptor sedan from Wondries Fleet Group in an amount not to exceed \$24,793.

JUSTIFICATION: The requested vehicle will be used to replace aging police department vehicles as they are removed from patrol service due to excessive miles.

The purchase of this vehicle fulfills the grant requirements under the FY10-2011 Special Distribution Fund (SDF) Grant.

BACKGROUND: On February 23, 2010, the Banning Police Department submitted a proposal for the FY10-11 SDF Grant to the Morongo Band of Mission Indians in the amount of \$564,951. The Morongo Band of Mission Indians forwarded the department’s application to the Riverside County Indian Gaming Local Community Benefits Committee with their full support. The proposal identified the police department’s need for seven (7) vehicles.

Grant funds set aside for these vehicle purchases equaled \$284,500. However, through negotiations with vehicle and equipment vendors and other grant income sources, the police department only required \$244,200 to purchase and equip the seven original vehicles. Consistent with SDF grant requirements, the police department intends to use the saved grant funds [\$40,300] to purchase and equip an 8th vehicle under the already approved FY10-2011 SDF Grant application.

The Banning Police Department received a “Piggy Back” bid for the 2011 Crown Victoria Police Interceptor sedans from Wondries Fleet Group under the Los Angeles County Contract DPO-SH-11323318-1, dated February 10, 2012. The quoted amount for each vehicle is \$24,793.

FISCAL DATA: The purchase of this vehicle will not require any funding from the City’s General Fund. The FY10-11 SDF Grant funds have been received by the City and are now available for vehicle purchases.

RECOMMEND BY:



Leonard Purvis
Chief of Police

June Overholt
Administrative Services Director

APPROVED BY:



Andrew Takata
City Manager

RESOLUTION NO. 2012-58

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE PURCHASE OF ONE (1) 2011 FORD CROWN VICTORIA POLICE INTERCEPTOR SEDAN IN THE AMOUNT OF \$24,793.

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

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

WHEREAS, it is imperative the Banning Police Department maintain the optimal level of transportation for its officers to complete their assignments; and

WHEREAS, there is a need to replace high mileage patrol vehicles; 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 authorizes the Banning Police Department to accept the bid from Wondries Fleet Group in the amount of \$24,793 for the purchase of one (1) 2011 Ford Crown Victoria Police Interceptor sedan to be paid for through the funds received under the FY10-11 SDF Grant. The Finance Department is authorized to make the necessary budget adjustments related to these funds.

PASSED, APPROVED, AND ADOPTED this 10th day of July, 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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

Aleshire & Wynder, LLP
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-58 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of July 2012, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL/BANNING UTILITY AUTHORITY MEETING
CONSENT ITEM**

DATE: July 10, 2012

TO: City Council and Banning Utility Authority

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2012-09 UA, "Authorizing the Submittal of a Grant Application for a Local Groundwater Assistance Grant to the California Department of Water Resources"

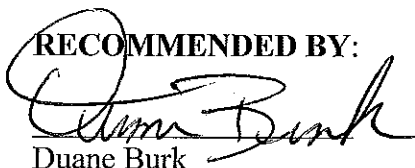
RECOMMENDATION: Adopt Banning Utility Resolution No. 2012-09, "Authorizing the Submittal of a Grant Application for a Local Groundwater Assistance Grant to the California Department of Water Resources."

JUSTIFICATION: The California Department of Water Resources requires that an approved resolution for the submittal of a grant application for a Local Groundwater Assistance Grant be included with the grant application.

BACKGROUND: The California Department of Water Resources ("DWR") released its Guidelines and Proposal Solicitation Package ("PSP") for the Local Groundwater Assistance ("LGA") Grant program. The Guidelines and PSP will be used to administer the LGA grant funding pursuant to The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 ("Prop 84"). LGA grants provide local public agencies which have the authority to manage groundwater resources with up to \$250,000.00 in grant funding. The DWR has authorized \$4.7 million in Prop 84 funds for the LGA Grant program. Eligible projects include: groundwater data collection, modeling, monitoring and management studies; monitoring programs and installation of equipment; basin management; development of information systems; and other groundwater related work as authorized in California Water Code Section 10795 *et seq.* The grant applications are due on July 13, 2012.

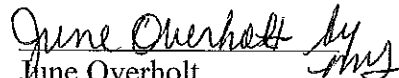
FISCAL DATA: At this time there is not a fiscal impact to the City. The grant, if awarded to the City, does not require a local match.

RECOMMENDED BY:



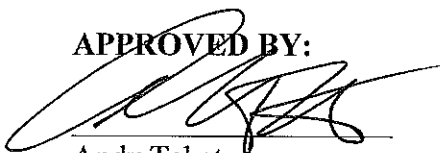
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2012-09 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, "AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION FOR A LOCAL GROUNDWATER ASSISTANCE GRANT TO THE CALIFORNIA DEPARTMENT OF WATER RESOURCES"

WHEREAS, the California Department of Water Resources (DWR) released its Guidelines and Proposal Solicitation Package for the Local Groundwater Assistance (LGA) Grant program which will be administered pursuant to The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Prop 84); and

WHEREAS, the DWR has authorized \$4.7 million for the LGA Grant program; and

WHEREAS, the maximum grant amount per recipient is \$250,000.00, which does not require a local match; and

WHEREAS, eligible projects include: groundwater data collection, modeling, monitoring and management studies; monitoring programs and installation of equipment; basin management; development of information systems; and other groundwater related work as authorized in California Water Code Section 10795 *et seq.*

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

SECTION 1. Banning Utility Authority adopts Resolution No. 2012-09 UA authorizing that an application be made to the California Department of Water Resources to obtain a Local Groundwater Assistance Grant pursuant to the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Public Resource Code Section 75001 *et seq.*) and to enter into an agreement to receive a grant.

SECTION 2. The City Manager is hereby authorized and directed to prepare the necessary data, conduct investigations. File a Local Groundwater Assistance Grant application, and execute a grant agreement with the California Department of Water Resources.

PASSED, APPROVED and ADOPTED this 10th day of July, 2012.

Don Robinson, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary
Banning Utility Authority

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

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

CERTIFICATION:

I, Marie A. Calderon, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-09 UA was duly adopted by the Banning Utility Authority of the City of Banning at a regular meeting thereof held on the 10th day of July, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

100

**CITY COUNCIL/BANNING UTILITY AUTHORITY JOINT MEETING
CONSENT ITEM**

DATE: July 10, 2012

TO: City Council and Banning Utility Authority

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2012-10 UA, "Authorizing the Implementation of the Regional Maximum Benefit Objectives in the Beaumont Management Zone"

RECOMMENDATION: Adopt Banning Utility Authority Resolution No. 2012-10 UA, "Authorizing the Implementation of the Regional Maximum Benefit Objectives in the Beaumont Management Zone."

JUSTIFICATION: The approval of this resolution will express the City of Banning's support and commitment to the Proposed Regional Implementation of Maximum Benefit Commitments for the Beaumont Management Zone.

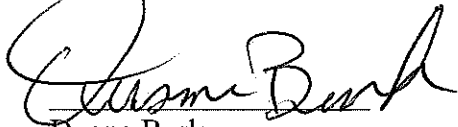
BACKGROUND: On January 22, 2004, the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") adopted Resolution No. R8-2004-0001, amending the Water Quality Control Plan for the Santa Ana River Basin ("Basin Plan") incorporating an updated Total Dissolved Solids ("TDS") and Nitrogen Management Plan for the Santa Ana Region, updated groundwater subbasins, revised TDS and nitrogen wasteload allocations. The 2004 Basin Plan included antidegradation water quality objectives which restrict the use of recycle water for irrigation and/or groundwater recharge for certain groundwater management zones including the Beaumont Management Zone ("BMZ").

On September 13, 2010 the Beaumont Cherry Valley Water District, the City of Beaumont and the Yucaipa Valley Water District was issued, by the Regional Board, an *Order Pursuant to Water Code Section 132674 for Technical Reports to Support the Implementation of the Maximum Benefit Objectives for TDS and Nitrate Nitrogen in the BMZ* ("Order"). The City of Banning, in anticipation of its plans to use recycled water over the BMZ, participated in the preparation of the reports as required by the Regional Board. Participation by the City of Banning in this process ensures that the City will be covered under the updated maximum benefit implementation plan for the BMZ.

The collaborative efforts by the various agencies to meet the request of the Regional Board's Order resulted in the submittal of the "Proposed Regional Implementation of Maximum Benefit Commitments for the BMZ" ("Regional Plan"), attached as Exhibit "A", dated September 20, 2011. On January 23, 2012, the Regional Board sent correspondence confirming that the proposed Regional Plan provided reasonable assurances for the protection of water quality and beneficial use within the BMZ and would maintain maximum benefit water quality objectives of participating agencies pursuant to the Basin Plan adopted by the Regional Board on January 22, 2004.

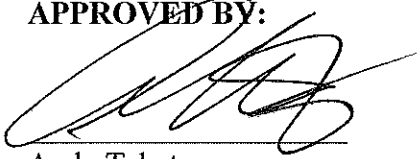
FISCAL DATA: N/A.

RECOMMENDED BY:

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

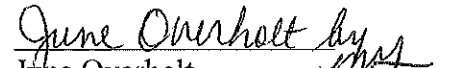
Duane Burk
Director of Public Works

APPROVED BY:

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

Andy Takata
City Manager

REVIEWED BY:

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

June Overholt
Administrative Services Director/
Deputy City Manager

RESOLUTION NO. 2012-10 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, "AUTHORIZING THE IMPLEMENTATION OF THE REGIONAL MAXIMUM BENEFIT OBJECTIVES IN THE BEAUMONT MANAGEMENT ZONE"

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") is charged with maintaining water quality in local groundwater basins, including the Beaumont Management Zone (BMZ); and

WHEREAS, on January 22, 2004, the Regional Board amended the Water Quality Control Plan for the Santa Ana River Basin ("Basin Plan") incorporating an updated Total Dissolved Solids ("TDS") and Nitrogen Management Plan for the Santa Ana Region, updated groundwater subbasins, revised TDS and nitrogen wasteload allocations; and

WHEREAS, the City of Banning participated in the preparation and subsequent submittal of a draft plan entitled "Proposed Regional Implementation of Maximum Benefit Commitments for the BMZ" ("Regional Plan") ; and

WHEREAS, on January 23, 2012, the Regional Board sent correspondence confirming that the proposed Regional Plan provided reasonable assurances for the protection of water quality and beneficial use within the BMZ and will maintain maximum benefit water quality objectives of participating agencies pursuant to the Basin Plan adopted by the Regional Board on January 22, 2004.

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

SECTION 1. The Banning Utility Authority adopts Resolution No. 2012-10 UA "Authorizing the Implementation of the Regional Maximum Benefit Objectives in the Beaumont Management Zone."

SECTION 2. The City Manager is authorized to finalize and execute the Regional Plan and submit it to the Regional Board.

PASSED, APPROVED and ADOPTED this 10th day of July, 2012.

Don Robinson, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary
Banning Utility Authority

103

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

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

CERTIFICATION:

I, Marie A. Calderon, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-10 UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at a regular meeting thereof held on the 10th day of July, 2012 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT “A”

**PROPOSED REGIONAL IMPLEMENTATION OF MAXIMUM
BENEFIT COMMITMENTS FOR THE BEAUMONT
MANAGEMENT ZONE**

Preliminary Documentation - Subject to Modification

**Proposed Regional Implementation of
Maximum Benefit Commitments for the
Beaumont Management Zone**

Preliminary Draft
September 20, 2011

Submitted to the Santa Ana Regional Water Quality Control Board

by

City of Banning
Beaumont Cherry Valley Water District
San Geronio Pass Water Agency
Yucaipa Valley Water District

"California highly values its water resources, which are significantly limited in quantity and quality. Recurring periods of drought have demonstrated the magnitude and severity of our water quantity limitations. Improper waste management practices and contaminated sites pose significant threats to the quality of California's useable groundwater and surface water sources."

- Adapted from the State Water Resources Control Board "A Compilation of Water Quality Goals", April 2011

Background

State Water Resources Control Board - Resolution No. 68-16

On October 24, 1968, the State Water Resources Control Board adopted Resolution No. 68-16 setting a policy for maintaining high quality water resources in California. This Resolution acknowledged that the "...California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the water of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State..."

This policy set the stage for protecting the high quality waters in the State of California by resolving that,

"any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with the maximum benefit to the people of the State will be maintained."

Santa Ana Regional Water Quality Control Board - Resolution No. R8-2004-0001

On January 22, 2004, the California Regional Water Quality Control Board, Santa Ana Region adopted Resolution No. R8-2004-0001, amending the Water Quality Control Plan for the Santa Ana River Basin incorporating an updated Total Dissolved Solids (TDS) and Nitrogen Management Plan for the Santa Ana Region, updated groundwater subbasins, revised TDS and nitrogen wasteload allocations.

During the preparation of the updated Basin Plan, stakeholders and the Regional Water Quality Control Board staff recognized that the reuse of recycled water is critical to many agencies' plans to meet the increasing water demands in the region. In some areas of the watershed, there exists assimilative capacity for the addition of TDS and/or nitrogen where wastewaters

with higher TDS/nitrogen concentrations than the receiving waters are diluted by natural rainfall or recharge so the TDS and nitrogen objectives of the receiving waters are met. In an area like the Beaumont Management Zone, assimilative capacity did not exist for the use of recycled water use or recharge until a "maximum benefit" objective was approved. The application of a "maximum benefit" objective is contingent on the implementation of certain projects and programs by specific dischargers as part of their maximum benefit demonstration.

Groundwater Management Zone	"Maximum Benefit" Water Quality Objective	Antidegradation Water Quality Objective
Beaumont Management Zone	330 mg/l	230 mg/l
Yucaipa Management Zone	370 mg/l	320 mg/l
San Timoteo Management Zone	400 mg/l	300 mg/l

Source: California Regional Water Quality Control Board Santa Ana Region, Resolution R8-2004-0001, Table 4-1.

State of California - Recycled Water Policy

On February 3, 2009, the California State Water Resources Control Board (SWRCB) adopted a Recycled Water Policy (the "Policy") formally declaring their mission to "preserve, enhance and restore the quality of California's water resources to the benefit of present and future generations."

To achieve this mission, the SWRCB encourages every region in California to develop a salt/nutrient management plan by 2014 to serve as a foundation to provide California with clean, abundant and sustainable water supplies. This goal is only accomplished by properly implementing a water resource strategy that maximizes the use of recycled water, water conservation, and the use of storm water (including dry-weather urban runoff). These water resources are viewed as drought-proof and reliable, and will generally minimize carbon footprints over the long-term.

The Recycled Water Policy formally sets forth the following goals for the State of California:

- Increase the use of recycled water over 2002 levels by at least one million acre-feet per year by 2020 and by at least two million acre-feet per year by 2030.
- Increase the use of storm water over use in 2007 by at least 500,000 acre-feet per year by 2020 and by at least one million acre-feet per year by 2030.
- Increase the amount of water conserved in urban and industrial uses by comparison to 2007 by at least 20 percent by 2020.
- Included in these goals is the substitution of as much recycled water for potable water as possible by 2030.

The SWRCB recognizes that some groundwater basins have salts and nutrients that exceed or threaten to exceed water quality objectives established in the applicable Water Quality Control Plans (Basin Plans). Therefore, it has been determined that salts and nutrients from all sources be managed on a basin-wide or watershed-wide basis in a manner that ensures attainment of water quality objectives and protection of beneficial uses.

The representatives from the Beaumont Cherry Valley Water District, the City of Banning, the San Geronio Pass Water Agency, and the Yucaipa Valley Water District support the principles established in the Recycled Water Policy adopted by the State Water Resources Control Board

and have agreed to jointly implement a salt management strategy to protect the water resources of the Beaumont Management Zone. These participating agencies agree with the State Water Board finding that the appropriate way to address salt management issues is through the development of a regional salt management strategy equally applied amongst all recycled water users and waste discharge permits in the Beaumont Management Zone.

San Timoteo Watershed Management Authority "Maximum Benefit" Commitments

On July 2, 1990, the State Water Resources Control Board issued an administrative procedure for antidegradation policy implementation. This policy requires an antidegradation analysis to be completed to "...support all regulatory actions that, in the Regional Board's judgment, will result in a significant increase in pollutant loadings".

When undertaking an antidegradation analysis, the Regional Board would proceed as follows:

1. Compare receiving water quality to the water quality objectives established to protect designated beneficial uses:
 - a. If baseline water quality is equal to or less than the quality as defined by the water quality objective, water quality shall be maintained or improved to a level that achieves the objectives.
 - b. If baseline water quality is better than the water quality as defined by the water quality objective, the baseline water quality shall be maintained unless poorer quality is necessary to accommodate important economic or social development and is considered to be of maximum benefit to the people of the State of California.

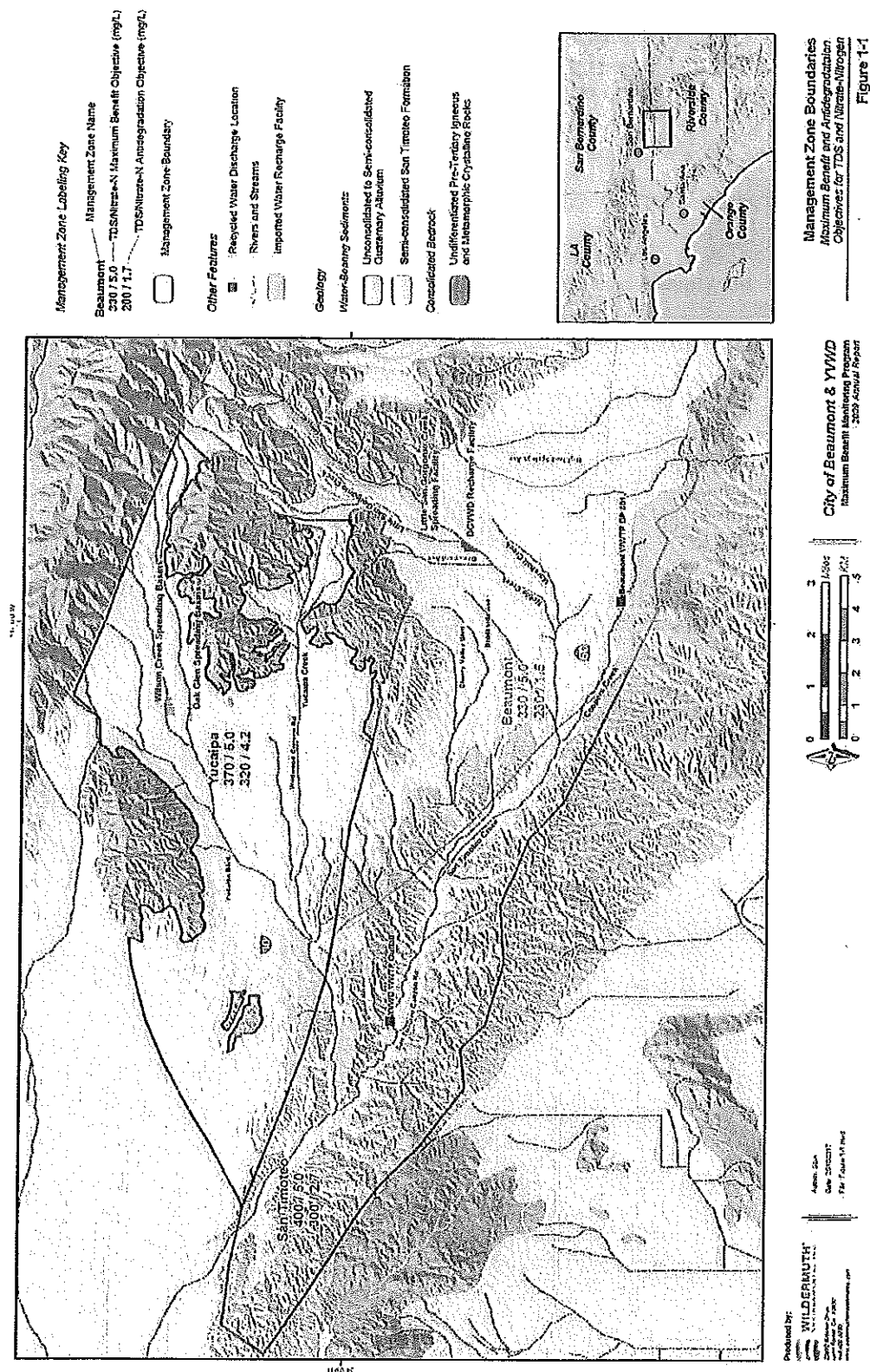
As part of the 2004 Basin Plan adopted by the Santa Ana Regional Water Quality Control Board, a number of the agencies participating in the preparation of this Salt Management Strategy were members of the San Timoteo Watershed Management Authority ("STWMA"). The STWMA identified to the Regional Water Quality Control Board in documentation dated October 30, 2002, that California Water Code section 13241 provides for a change of water quality objectives based on the following:

"Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

- a) Past, present, and probable future beneficial uses of water;
- b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available hereto;
- c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area;
- d) Economic considerations;
- e) The need for developing housing within the region;
- f) The need to develop and use recycled water."

Based on this criterion, the STWMA member agencies and the Santa Ana Regional Water Quality Control Board agreed to establish maximum benefit water quality objectives for the Beaumont Management Zone as long as the irrevocable commitments made by the member agencies are fulfilled. These irrevocable commitments are specifically identified in Resolution No. R8-2004-0001 (pages 72-78).

The parties recognize that failure to fully implement the commitments will required mitigation of the adverse water quality effects, both on the immediate and downstream waters that resulted from the recycled water discharges. Furthermore, the "mitigation by groundwater extraction and desalting must be adjusted to address concentrations of salt and nitrogen in the basin, not simply salt load"



Regional Salt Management Strategy

On September 13, 2010 the managers of the Beaumont Cherry Valley Water District, City of Beaumont and Yucaipa Valley Water District received an *Order Pursuant to Water Code Section 13267 for Technical Reports for a Technical Report to Support the Implementation of the Maximum Benefit Objectives for Total Dissolved Solids and Nitrate Nitrogen in the Beaumont Management Zone*. The Order required the preparation of a technical report that included the following elements:

1. Updated planning information for the use of all sources of water by each agency in the Beaumont Management Zone. This updated information needed to include flow, quality, and recharge or use location;
2. An update of the CSRM model to create 30-year TDS and nitrogen projections for the Beaumont Management Zone based on the full range of recycled water planning scenarios that are being considered; and
- 3A. An assessment of the individual and cumulative water quality impact as a result of each agency's water management activities; and
- 3B. A calculation of the salt liability of all recycled water users in the Beaumont Management Zone.

The required elements identified above as 1., 2., and 3A. have been previously provided to the Santa Ana Regional Water Quality Control Board. This draft document has been prepared in compliance with the required element 3B. above.

Over the past several months, the agencies involved in the preparation of this document have strongly embraced the importance of maintaining high quality water resources in the Beaumont Management Zone. Since the Beaumont Management Zone does not have a large volumes of natural runoff like the Bunker Hill B Management Zone, it is important to protect the local water quality in a manner consistent with the policies of the State of California and the Basin Plan as approved by the Santa Ana Regional Water Quality Control Board.

For illustration purposes, the following graph represents the water quality objectives and 2009 current ambient water quality as water resources proceed downstream from the Beaumont Management Zone to the Orange County Management Zone.

Total Dissolved Solids (mg/l)			
Management Zone	Water Quality Objective	Maximum Benefit Objective	2009 Current Ambient Water Quality
Beaumont	230	330	280
San Timoteo	300	400	420
Bunker Hill B	310	--	270
Colton	410	--	430
Riverside A	560	--	430
Chino - South	680	--	980
Orange County	580	--	600

To maintain the high quality water resources of the Beaumont Management Zone, the undersigned agencies recognize the importance of fully implementing the commitments made by the San Timoteo Watershed Management Authority in order to maintain the maximum benefit objectives applied in the Beaumont Management Zone.

City of Banning:

_____	_____	_____
Print Name	Signature	Date

Beaumont Cherry Valley Water District:

_____	_____	_____
Print Name	Signature	Date

San Gorgonio Pass Water Agency:

_____	_____	_____
Print Name	Signature	Date

Yucaipa Valley Water District:

_____	_____	_____
Print Name	Signature	Date

1. **Surface Water Monitoring, Groundwater Monitoring and Ambient Groundwater Quality Determination.** (See Santa Ana Regional Water Quality Control Board Basin Plan, Table 5-10a, page 5-73 and 5-74, Items 1, 2, and 6)

The Beaumont Cherry Valley Water District, the City of Banning, the San Gorgonio Pass Water Agency, and the Yucaipa Valley Water District are committed to continue our active role in surface water monitoring, groundwater monitoring and the preparation of the ambient groundwater quality determinations.

To fully satisfy the maximum benefit commitment associated with surface water monitoring, groundwater monitoring and ambient groundwater quality determination, the Parties propose to jointly collect water quality samples and participate in the cost of data compilation and report preparation as provided in Exhibit C. The proposed water quality monitoring locations and tests performed will be reviewed and potential changes to the water quality protocol will be forwarded to the Regional Water Quality Control Board for review and approval every three years as part of the ambient water quality determination.

2. **Desalter and Brineline Facilities.** (See Santa Ana Regional Water Quality Control Board Basin Plan, Table 5-10a, page 5-73, Item 3)

The Yucaipa Valley Water District is in the process of completing an extension of the Santa Ana Regional Interceptor from the San Bernardino Wastewater Treatment Plant to the Wochholz Regional Water Recycling Facility. This brineline extension (the "Yucaipa Valley Regional Brineline") and associated reverse osmosis equipment is scheduled to be completed and operational by the second quarter of 2014.

With the completion of the brineline and reverse osmosis, the "maximum benefit" objectives necessary to protect the water resources of the Beaumont Management Zone is achieved for the Yucaipa Valley Water District and users of the recycled water produced by the Wochholz Regional Water Recycling Facility.

As provided in greater detail below, compliance with this commitment will be demonstrated as follows:

- A. **Recycled Water for Irrigation Purposes** - Upon completion and operation of the Yucaipa Valley Regional Brineline and associated equipment, the Yucaipa Valley Water District will reduce the salinity of recycled water supplies to comply with a 10-year running average total dissolved solids ("TDS") concentration of 330 mg/l in the Beaumont Management Zone.

Compliance of this water quality objective will be measured in the recycled water system as a weighted average of recycled water within the management zone and will be achieved by blending imported water sources or desalting the recycled water supply. The ten-year compliance calculation would begin when recycled water from the Wochholz Regional Water Recycling Facility is first introduced into the recycled water system.

- B. **Recycled Water Recharge** - Recycled water recharge, whether it is direct or incidental, shall comply with the maximum benefit objectives of the Beaumont Management Zone. Upon completion and operation of the Yucaipa Valley Regional Brineline and associated equipment, the Yucaipa Valley Water District will reduce the salinity of our recycled water to comply with a 10-year running average total dissolved solids ("TDS") concentration of 330 mg/l in the Beaumont Management Zone.

Compliance of this water quality objective will be measured at the point of discharge and will be achieved by desalting the recycled water supply and/or blending the recycled water supply with other imported water resources.

3. **Recycled (Non-Potable) Water Supply.** (See Santa Ana Regional Water Quality Control Board Basin Plan, Table 5-10a, page 5-73, Item 4)

The Beaumont Cherry Valley Water District, the City of Banning, the San Geronio Pass Water Agency, and the Yucaipa Valley Water District will maintain a 10-year running average total dissolved solids concentration of 330 mg/l in the recycled (non-potable) water supplies used in the Beaumont Management Zone.

Compliance of this water quality objective will be measured in the recycled water system as a weighted annual average concentration of all recycled water sources added to the recycled water system within the management zone. It is anticipated that an agency can comply with this "maximum benefit" commitment by blending the recycled water supply with water resources imported into the Beaumont Management Zone, imported water from the State Water Project, storm water added to the recycled water supply system, or by directly desalting the recycled water source.

4. **Recycled Water Recharge.** (See Santa Ana Regional Water Quality Control Board Basin Plan, Table 5-10a, page 5-73, Item 5)

The Beaumont Cherry Valley Water District, the City of Banning, the San Geronimo Pass Water Agency, and the Yucaipa Valley Water District recognize the importance of maintaining the pure water resources in the Beaumont Management Zone. Therefore, the Parties will recharge recycled water, whether direct or incidental; in compliance with a 10-year running average of 330 mg/l total dissolved solids for the recharge of waters within the boundary of the Beaumont Management Zone.

Compliance of this water quality objective will be measured at the point of discharge to calculate the representative water quality and quantity recharged within the definitive recharge facility property/parcel boundary. The "maximum benefit" water quality objective at the recharge property/parcel is expected to be achieved by desalting the recycled water supply and/or blending recycled water with water resources added to the recharge facility such as imported water from outside the Beaumont Management Zone, imported water from the State Water Project, or storm water captured at the recharge facility. In all cases the quantity and quality of the water supplies recharged will be monitored and reported.

In cases whereby multiple Parties propose to recharge recycled water in the same recharge facility property/parcel boundary, each individual agency will separately demonstrate independent compliance with the maximum benefit objective. A comprehensive annual report will be compiled by the participating agencies demonstrating compliance with the maximum objective within the recharge facility property/parcel boundary by each agency.

The preparation of this document is based on a concept of consistent implementation of water quality objectives throughout the watershed. The Parties request permit language that provides an opportunity to ensure a consistent and uniform approach is applied to the implementation of waste discharge requirements in the region.

Santa Ana Regional Water Quality Control Board Basin Plan

The 1995 Water Quality Control Plan for the Santa Ana River Basin (Region 8) was updated in February 2008 with minor, nonsubstantive editorial corrections made to Chapter 4 in June 2011. Attached for reference are pages 5-71 to 5-81.

2. San Timoteo and Beaumont Management Zones – City of Beaumont and San Timoteo Watershed Management Authority (STWMA)

As shown in Chapter 4, two sets of TDS and nitrate-nitrogen objectives have been adopted for both the San Timoteo and Beaumont Management Zones: the "maximum benefit" objectives and objectives based on historic ambient quality (the "antidegradation" objectives). The application of the "maximum benefit" objectives for these Management Zones is contingent on the implementation of commitments by the City of Beaumont/STWMA (and, in the case of the San Timoteo Management Zone, by the Yucaipa Valley Water District (YVWD; see preceding discussion)) to implement a specific water and wastewater resources management program [Ref. 10E]. This program is part of a coordinated effort by the member agencies of STWMA to develop and implement projects that will assure reliable water supplies to meet rapidly increasing demands in this area. The San Timoteo Watershed Management Program (STWMP) developed by STWMA entails enhanced recharge of native and recycled water, maximizing the direct use of recycled water, optimizing the direct use of imported water, recharge and conjunctive use.

Wastewater collection and treatment services in the STWMA service area are provided by the City of Beaumont, as well as YVWD. Beaumont discharges tertiary treated wastewater to Coopers Creek, a tributary of San Timoteo Creek, Reach 3. This unlined reach of the Creek overlies and recharges the San Timoteo groundwater management zone.

Table 5-10a identifies the projects and requirements that must be implemented by Beaumont/STWMA to demonstrate that water quality consistent with maximum benefit to the people of the state will be maintained. STWMA, acting for all its member agencies, has committed to conduct the regional planning and monitoring activities necessary to implement these "maximum benefit" commitments, and the San Timoteo Watershed Management Program as a whole. Table 5-10a also specifies an implementation schedule. The Regional Board will revise the City of Beaumont's waste discharge requirements and take other actions as necessary to require that these commitments be met. It is assumed that maximum benefit is demonstrated, and that the "maximum benefit" water quality TDS and nitrate-nitrogen objectives apply to the Beaumont and San Timoteo Management Zones, as long as the schedule is being met⁷. If the Regional Board determines that the maximum benefit program is not being implemented effectively in accordance with the schedule shown in Table 5-10a (and in the case of the San Timoteo Management Zone, the commitments and schedule shown in Table 5-9a (see preceding section)), then maximum benefit is not demonstrated, and the "antidegradation" TDS and nitrate-nitrogen objectives apply. In this situation, the Regional Board will require mitigation for TDS and nitrate-nitrogen discharges

⁷ Application of "maximum benefit" objectives for the San Timoteo Management Zone is also contingent on the timely implementation of the commitments by the Yucaipa Valley Water District which are discussed in the preceding section.

affecting these management zones that took place in excess of limits based on the
"antidegradation" objectives.

This space has been intentionally left blank

IMPLEMENTATION

5-72

January 24, 1995
Updated February 2008

Table 5-10a

City of Beaumont and San Timoteo Watershed Management Authority
Maximum Benefit Commitments

Description of Commitment	Compliance Date – as soon as possible, but no later than
1. Surface Water Monitoring Program a. Submit Draft Monitoring Program to Regional Board b. Implement Monitoring Program c. Quarterly data report submittal d. Annual data report submittal	a. January 23, 2005 b. Within 30 days from Regional Board approval of monitoring plan c. April 15, July 15, October 15, January 15 d. February 15 th
2. Groundwater Monitoring Program a. Submit Draft Monitoring Program to Regional Board b. Implement Monitoring Program c. Annual data report submittal	a. January 23, 2005 b. Within 30 days from Regional Board approval of monitoring plan c. February 15 th
3. Desalter(s) and Brine Disposal Facilities Submit plan and schedule for construction of desalter(s) and brine disposal facilities. Facilities are to be operational as soon as possible but no later than 7 years from date of Regional Board approval of plan/schedule. b. Implement the plan and schedule	a. Within 6 months of either of the following: i. When Beaumont's effluent 5-year running average TDS exceeds 480 mg/L; and/or ii. When volume weighted average concentration in the Yucaipa MZ of TDS exceeds 320 mg/L b. Within 30 days from Regional Board approval of monitoring plan
4. Non-potable water supply Implement non-potable water supply system to serve water for irrigation purposes. The non-potable supply shall comply with a 10-year running average TDS concentration of 330 mg/L or less	December 23, 2014

IMPLEMENTATION

5-73

January 24, 1995
Updated February 2008

119

Description of Commitment	Compliance Date -- as soon as possible, but no later than
<p>5. Recycled water recharge</p> <p>The recharge of recycled water in the Beaumont or San Timoteo Management Zones shall be limited to the amount that can be blended with other recharge sources to achieve a 5-year running average equal to or less than the "maximum benefit" objectives for TDS and nitrate-nitrogen for the relevant Management Zone(s).</p> <p>a. Submit baseline report of amount, locations, and TDS and nitrogen quality of stormwater/imported water recharge.</p> <p>b. Submit documentation of amount, TDS and nitrogen quality of all sources of recharge and recharge locations. For stormwater recharge used for blending, submit documentation that the recharge is the result of City of Beaumont/STWMA enhanced recharge facilities/programs</p>	<p>Compliance must be achieved by end of 6th year after initiation of recycled water use/recharge operations.</p> <p>a. Prior to initiation of construction of basins/other facilities to support enhanced stormwater/imported water recharge .</p> <p>b. Annually, by January 15th, after initiation construction of facilities/implementation of programs to support enhanced recharge.</p>
<p>6. Ambient groundwater quality determination</p>	<p>July 1, 2005 and every 3 years thereafter</p>
<p>7. Replace denitrification facilities (if necessary to comply with TIN wasteload allocation specified in Table 5-5)</p>	<p>Compliance with 6 mg/L TIN limitation to be achieved by December 23, 2007</p>
<p>8. City of Beaumont recycled water quality improvement plan and schedule</p> <p>a. Submit plan and schedule</p> <p>b. Implement plan and schedule</p>	<p>a. 60 days after the TDS 12-month running average effluent quality equals or exceeds 480 mg/L for 3 consecutive months and/or the 12-month running average TIN concentration equals or exceeds 6 mg/L in any month (once facility/operational changes needed to achieve 6 mg/L TIN are in place)</p> <p>b. Upon approval by Regional Board</p>
<p>9. Remove/reduce the discharge of Beaumont Effluent From the unlined portion of San Timoteo Creek</p> <p>a. Submit proposed plan/schedule</p> <p>b. Implement plan/schedule</p>	<p>a. June 23, 2005</p> <p>b. Upon Regional Board approval</p>

IMPLEMENTATION

5-74

January 24, 1995
Updated February 2008

120

A. Description of City of Beaumont, San Timoteo Watershed Authority Commitments

1. Surface Water Monitoring Program (Table 5-10a, #1)

The City of Beaumont and the STWMA shall develop and submit for Regional Board approval a surface water monitoring program for San Timoteo, Little San Gorgonio and Noble Creeks at the locations listed in Table 5-10b. The monitoring program must be implemented within 30 days of Regional Board approval of the monitoring plan, and six months of data must be generated prior to the implementation of any changes to the effluent discharge points and before any recycled water is used in the Beaumont or San Timoteo Management Zones.

At a minimum, the surface water monitoring program shall include the collection of monthly measurements of TDS and nitrogen components at locations in San Timoteo, Little San Gorgonio and Noble Creeks (see Table 5-10b). Data reports shall be submitted to the Regional Board's Executive Officer by April 15, July 15, October 15 and January 15 each year. An annual report summarizing all data collected for the year and evaluating compliance with relevant surface water objectives shall be submitted February 15th of each year.

2. Groundwater Monitoring Program (Table 5-10a, #2)

The purpose of the groundwater monitoring program is to identify the effects of the implementation of the Beaumont and San Timoteo Management Zone maximum benefit TDS and nitrate-nitrogen water quality objectives on water levels and water quality within the Beaumont and San Timoteo Management Zones. Prior to discharge of recycled water to the Beaumont and/or San Timoteo Management Zone, the City of Beaumont and the STWMA shall submit to Regional Board for approval a groundwater monitoring program to determine ambient water quality in the Beaumont and San Timoteo Management Zones. The groundwater monitoring program must be implemented within 30 days of approval by the Regional Board.

An annual report, including all raw data and summarizing the results of the approved groundwater monitoring program, shall be submitted to the Regional Board by February 15th of each year.

3. Desalters and Brine Disposal (Table 5-10a, #3)

The City of Beaumont and the STWMA shall construct and operate desalting facilities and brine disposal facilities when:

- a. The 5-year running average TDS concentration in recycled water produced at the City of Beaumont wastewater treatment plant exceeds 480 mg/L, or
- b. The volume-weighted TDS concentration in the Beaumont Management Zone equals or exceeds 320 mg/L.

IMPLEMENTATION

6-75

January 24, 1995
Updated February 2008

The construction of these facilities will be in accordance with a plan and schedule submitted by Beaumont/STWMA and approved by the Regional Board. The schedule shall assure that these facilities are in place within 7 years of Regional Board approval. These facilities shall be designed to stabilize or reverse the degradation trend evidenced by effluent and/or management zone quality.

Table 6 - 10b

Surface Water Monitoring Sites for Monitoring Water Quality and Quantity
City of Beaumont & San Timoteo Watershed Management Authority

Site Name	Discharge	Owner	Type	Discharge Frequency	Monitoring Period	Water Quality Monitoring		
						Frequency	Period	Analyses
Above confluence With Coopers Cr.	San Timoteo Creek	Beaumont & STWMA	Total Discharge	Bi-weekly	Jan-Dec	Bi-weekly	Jan-Dec	TDS, TIN, Physical
Near Hinda Sec.35 T2S,R2W	San Timoteo Creek	Beaumont & STWMA	Total Discharge	Bi-weekly	Jan-Dec	Bi-weekly	Jan-Dec	TDS, TIN, Physical
Above confluence With San Timoteo Creek	Coopers Creek	Beaumont & STWMA	Total Discharge	Bi-weekly	Jan-Dec	Bi-weekly	Jan-Dec	TDS, TIN, Physical
At Freeway 10	Little San Gorgonio Cr.	Beaumont & STWMA	Total Discharge	Bi-weekly	Jan-Dec	Bi-weekly	Jan-Dec	TDS, TIN, Physical
At Freeway 10	Noble Creek	Beaumont & STWMA	Total Discharge	Bi-weekly	Jan-Dec	Bi-weekly	Jan-Dec	TDS, TIN, Physical
Recharged to Beaumont MZ	State Water Project	Beaumont & STWMA	Total Discharge	Bi-weekly	Jan-Dec	Monthly	Jan-Dec	TDS, Nitrate-N
Recharged to Beaumont MZ	Storm water	Beaumont & STWMA	Total Discharge	Bi-weekly	Jan-Dec	Monthly	Jan-Dec	TDS, Nitrate-N

IMPLEMENTATION

5-76

January 24, 1995
Updated February 2008

4. Non-potable water supply distribution system (Table 5-10a, #4)

Like YVWD, the City of Beaumont is constructing a non-potable water system that will convey untreated State Project water and recycled water for irrigation within its service area. The intent of blending these sources is to minimize the impact of recycled water use on groundwater quality in the proposed Beaumont and San Timoteo Management Zones. A higher proportion of State Project water will be used in wet, surplus years, while larger amounts of recycled water will be used in dry, deficit years.

5. Recycled Water Use (Table 5-10a, #5)

The use of recycled water within the Beaumont Management Zone is a critical component of the City of Beaumont and STWMA water management plan and is necessary to maximize the use of the water resources of the Beaumont area.

The demonstration of "maximum benefit" and the continued application of the "maximum benefit" objectives depends on the combined recharge (recycled water, imported water, storm water) to the Beaumont Management Zone of a 5-year annual average (running average) TDS concentration of 330 mg/L and a nitrate-nitrogen concentration of 5 mg/L. If recycled water recharge in the San Timoteo Management Zone is pursued, then the application of the "maximum benefit" objectives will depend on the combined recharge to that Zone of 5-year annual average (running average) concentrations of 400 mg/L or less TDS, and 5 mg/L or less nitrate-nitrogen.

To comply with this requirement, the STWMA member agencies are developing plans to recharge and store State Project water in the proposed Beaumont Management Zone. The Beaumont-Cherry Valley Water District (BCVWD) is developing a new 80-acre groundwater recharge project that will increase storm water recharge in the Beaumont Basin by 4,100 acre-ft/yr. This facility will also be used to recharge State Water project water. The City of Beaumont is also developing storm water recharge in facilities in newly developing areas, which is expected to result in the recharge of an additional 2,400 acre-ft/yr of stormwater runoff.

Accordingly, the use of recycled water for use or recharge in the Beaumont or San Timoteo Management Zone shall be limited to the amount that can be blended on a volume-weighted basis with other sources of recharge to achieve 5-year running average concentrations less than or equal to the "maximum benefit" objectives for the affected groundwater management zone. The 25% nitrogen loss coefficient will be applied in determining the amount of recharge of other water sources that must be achieved to meet the 5-year running average nitrogen concentrations.

6. Ambient Groundwater Quality Determination (Table 5-10a, # 6)

By July 1, 2005, and every three years thereafter, the City of Beaumont and STWMA shall submit a determination of ambient TDS and nitrate-nitrogen quality in the Beaumont and San Timoteo Management Zones. This determination shall be accomplished using methodology consistent with the calculation (20-year running averages) used by the Nitrogen /TDS Task Force to develop the TDS and nitrate-nitrogen "antidegradation" water quality objectives for groundwater management zones within the region [Ref. 1].

7. Replacement/modification of denitrification facilities (Table 5-10a, #7)

The City of Beaumont has committed to produce recycled water with a 12-month average TIN concentration of 6 mg/L or less by 2008. This may be accomplished via operational changes, or may require the installation/modification of facilities. This TIN effluent quality is specified in the TIN wasteload allocation (see Table 5-5) and is necessary to assure compliance with the proposed "maximum benefit" nitrate-nitrogen objective for the Beaumont and San Timoteo Management Zones (5 mg/L). An appropriate schedule, not to exceed December 23, 2007 for compliance with this effluent limit will be specified in a revised NPDES permit for the City.

8. City of Beaumont Wastewater Management (Table 5-10a, #8)

Beaumont expects to limit the TDS concentration in its effluent to less than or equal to 490 mg/L by using a low TDS source water supply for potable uses, selective desalting of either source water and/or recycled waters, and minimizing the TDS waste increment.

Within 60 days after the Beaumont 12-month running average concentration for TDS equals or exceeds 480 mg/L for 3 consecutive months, or the 12-month running average TIN concentration equals or exceeds 6 mg/L in any month (once facility/operational changes needed to achieve 6 mg/L TIN are in place), the City of Beaumont shall submit to the Regional Board a plan and time schedule for implementation of measures to insure that the average agency wastewater effluent quality does not exceed 490 mg/L and 6 mg/L for TDS and TIN, respectively. The plan and schedule are to be implemented upon approval by the Regional Board.

9. Relocation of San Timoteo Creek Discharge (Table 5-10a, #9)

Like YVWD, Beaumont has established the goal of eliminating its discharge to the unlined reach of San Timoteo Creek by 2008 to minimize the impacts of these discharges on the San Timoteo Management Zone. The STWMP anticipates that Beaumont's recycled water will be almost completely reused within the Beaumont area for landscape irrigation, habitat enhancement, and potentially for groundwater recharge. Like YVWD, Beaumont and STWMA are also considering the export of a portion of Beaumont's surplus recycled water to the San Jacinto basin, where the

TDS objectives are higher than those for the Beaumont Management Zone and recycled water demands are greater than supplies. Some limited recycled water discharge to Coopers Creek and thence /San Timoteo Creek may need to be continued to support existing riparian habitat.

Whole or partial removal of the discharge from the unlined reach of San Timoteo Creek would improve the quality of groundwater in the San Timoteo Management Zone and supplement recycled water supplies available for reuse elsewhere in the service area.

By June 23, 2005, Beaumont/STWMA shall submit a proposed plan and schedule to remove/reduce the discharge of recycled water to the unlined reach of San Timoteo Creek. The plan and schedule shall be implemented upon Regional Board approval.

B. Implementation by Regional Board

1. Revision of City of Beaumont NPDES Permit

To implement the "maximum benefit" objectives, the Regional Board will revise the NPDES permit for the City of Beaumont wastewater discharge to reflect the commitments described above, as appropriate. This includes the following.

The discharge limits for TDS and TIN will be specified as an annual volume-weighted average not to exceed 490 mg/L TDS and 6 mg/L TIN. These limits are based on the wasteload allocation shown in Table 5-5. A schedule not to exceed December 23, 2007 for compliance with this TIN limit shall be included in the permit. This schedule will enable Beaumont to make the necessary facility/operational changes. Alternative TDS and nitrate-nitrogen limitations based on the "antidegradation" objectives will also be specified and will apply should the Regional Board find that maximum benefit is not demonstrated. These alternative limits are also specified in Table 5-5. Compliance schedules for these alternative limits will be specified in Beaumont's waste discharge requirements, as necessary.

Beaumont will be required to implement measures to improve effluent quality when the 12-month running average effluent TDS quality equals or exceeds 480 mg/L for 3 consecutive months, and/or when the 12-month running average TIN concentration equals or exceeds 6 mg/L in any month (once the facility/operational changes necessary to assure compliance with the 6 mg/L limit are in place).

Beaumont's waste discharge requirements will require that recycled water used for recharge shall be limited to the amount that can be blended with other water sources, such as stormwater or imported water, to achieve 5-year running average concentrations equal to or less than the "maximum benefit" TDS and nitrate-nitrogen objectives for the affected management zone (Beaumont or San Timoteo).

The effluent limits for the City of Beaumont, which establish an upper limit on TDS and TIN concentrations of recycled water discharged in the management zones, are

a key part of the maximum benefit demonstration. The cap on effluent TDS and TIN concentrations provides a controlling point for management of TDS and nitrogen water quality. The City of Beaumont has committed to initiate the building of a groundwater desalter and brine disposal line when the TDS in the City's effluent reaches 480 mg/L. Further, the City will immediately implement a salt management program to reduce the salts entering the City's wastewater treatment plant. This salt management program will include: 1) provision of incentives for the removal of on-site regenerative water softeners and the use of off-site regenerative systems; and 2) percolation of State Water Project water into the Beaumont Management Zone when State Water Project water has low TDS. Implementing these measures will assure that the groundwater quality remains at or below the Beaumont management zone objective of 330 mg/L TDS. Maintenance of this ambient groundwater quality is necessary, in turn, to assure that the City's wastewater treatment facility is able to meet the effluent TDS limits. Beaumont Management Zone groundwater is a component of the water supplied to the City and its quality thus has an important effect on the effluent quality. Poor ambient quality will preclude the City from meeting effluent limits without desalting.

Beaumont will be required to submit a proposed plan and schedule for the removal/reduction of its wastewater discharges from the unlined reach of San Timoteo Creek. Beaumont's revised permit will also reflect the surface and groundwater monitoring program requirements described above. This includes the determination of ambient quality in the San Timoteo and Beaumont Management Zones.

2. Review of Project Status

No later than 2005, and every three years thereafter (to coincide with the Regional Board's triennial review process), the Regional Board intends to review the status of the activities planned and executed by the City of Beaumont and STWMA to demonstrate maximum benefit and justify continued implementation of the "maximum benefit" water quality objectives. This review is intended to determine whether the commitments specified above and summarized in Table 5-10a are met. As indicated above, if, as a result of this review, the Regional Board finds that the City of Beaumont and STWMA commitments are not met and after consideration at a duly noticed Public Hearing, the Regional Board will make a finding that the lowering of water quality associated with TDS and nitrate-nitrogen water quality objectives that are higher than historical water quality (the "antidegradation" objectives) is not of maximum benefit to the people of the state. By default, the scientifically derived "antidegradation" objectives for the Beaumont and San Timoteo Management Zones would become effective (230 mg/L TDS and 1.5 mg/L nitrate-nitrogen for the Beaumont Management Zone; 300 mg/L TDS and 2.7 mg/L nitrate-nitrogen for the San Timoteo Management Zone (see Chapter 4).

Furthermore, in the event that the projects and actions specified in Table 5-10a are not implemented, the Regional Board will require that the City of Beaumont and STWMA mitigate the adverse water quality effects, both on the immediate and

IMPLEMENTATION

6-80

January 24, 1995
Updated February 2008

downstream waters, that resulted from the recycled water discharges based on the "maximum benefit" objectives. As for CBW/IEUA and YVWD, discharges in excess of the antidegradation objectives that must be considered for mitigation include both recycled water and imported water, at TDS concentrations in excess of the antidegradation objectives. Mitigation by groundwater extraction and desalting must be adjusted to address concentrations of salt and nitrogen in the basin, not simply salt load.

(End of Salt Management Plan Section) (End of Resolution R8-2004-0001)

NONPOINT SOURCE PROGRAM

Considerable improvements in water quality have been achieved in the nation through the control of point source discharges such as those from sewage treatment plants or industrial facilities. It is now recognized that in many areas, nonpoint source inputs, such as urban nuisance flows and stormwater runoff, are the principal sources of contaminant inputs to surface and groundwaters.

In contrast to point sources, which discharge wastewater of predictable quantity and quality at a discrete point (usually at the end of a pipe), nonpoint source inputs are diffuse in origin and variable in quality. Management of nonpoint source inputs is in many ways more difficult to achieve, since it requires an array of control techniques customized to local watershed conditions.

Nonpoint Source Management Plan

Section 319 of the 1987 amendments to the Clean Water Act (33 USC 466 *et seq.*), established the framework for nonpoint source activities. Section 319 requires each state to prepare a Nonpoint Source Management Plan and to conduct an assessment of the impact nonpoint sources have on the state's waterbodies. In response to these requirements, the State Board adopted the Nonpoint Source Management Plan (NPSMP) in 1988 and the Water Quality Assessment in 1990 (see Chapter 6 for a discussion of the Water Quality Assessment). The NPSMP establishes a statewide policy for managing nonpoint source inputs to California's waters and is part of this Basin Plan.

The State Board defined six objectives of the Nonpoint Source Management Plan, four of which apply to activities in the Santa Ana Region:

1. Initiate and institutionalize activities for control of nonpoint source pollution (drainage from urban activities, agriculture, silviculture, abandoned mines construction, grazing, hydrologic modification, and individual disposal systems). These activities include outreach, education, public participation, technical assistance, financial assistance, interagency coordination, and demonstration projects.

IMPLEMENTATION

5-81

January 24, 1995
Updated February 2008

**Order Pursuant to Water Code Section 13267 for Technical Reports
for a Technical Report to Support the Implementation of the
Maximum Benefit Objectives for Total Dissolved Solids and
Nitrate Nitrogen in the Beaumont Management Zone**



California Regional Water Quality Control Board
Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

September 13, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Beaumont Cherry Valley Water District
Attention: Anthony Lara
Interim General Manager
560 Magnolia Avenue
Beaumont, CA 92223

City of Beaumont
Attention: David Dillon
Director of Economic Development
550 East 6th Street
Beaumont, CA 92223

Yucaipa Valley Water District
Attention: Joe Zoba
General Manager
12770 Second Street
Yucaipa, CA 92399

**ORDER PURSUANT TO WATER CODE SECTION 13267 FOR TECHNICAL REPORTS FOR A
TECHNICAL REPORT TO SUPPORT THE IMPLEMENTATION OF THE MAXIMUM BENEFIT
OBJECTIVES FOR TOTAL DISSOLVED SOLIDS AND NITRATE NITROGEN IN THE BEAUMONT
MANAGEMENT ZONE**

Gentlemen:

This Order, issued pursuant to California Water Code section 13267, requires that you submit certain plans and schedules (collectively, reports) to evaluate the impact of discharges of total dissolved solids (TDS) and nitrogen on the Beaumont Groundwater Management Zone (Beaumont MZ). This requirement is consistent with the Salt Management Plan for the Santa Ana Region, and in particular the maximum benefit implementation plan for the Beaumont MZ, adopted by the California Regional Water Quality Control Board, Santa Ana Region (Regional Water Board) in 2004 (Resolution No. R8-2004-0001) and approved by the State Water Resources Control Board and the Office of Administrative Law in 2005.

Background of the Maximum Benefit Implementation Plan for the Beaumont MZ

On June 26, 2002, the San Timoteo Watershed Management Authority (STWMA)¹ submitted a proposal to establish maximum benefit objectives for TDS and nitrate-nitrogen for the Beaumont MZ to accommodate water resource management projects, including the recharge of stormwater,

¹ The San Timoteo Watershed Management Authority (STWMA) was formed in January 2001 by the Beaumont-Cherry Valley Water District (BCVWD), the City of Beaumont (Beaumont), the South Mesa Water Company and the Yucaipa Valley Water District (YVWD). The STWMA formed a stakeholder group to develop a watershed scale water resources management program that would provide a safe and reliable water supply for all water users in the watershed. In July 2010, STWMA disbanded.

September 13, 2010
WC Sec.13267 Order re Beaumont MZ

Page 2 of 5

imported State Project Water (SPW), and recycled water. The maximum benefit objectives and commitments for Beaumont MZ were based on detailed model projections and analyses conducted by Wildermuth Environmental, Inc (WEI). The modeling analysis utilized a Constantly Stirred Reactor Model (CSRM), and simulated TDS groundwater quality through 2100 resulting from the implementation of several planned scenarios, including a no project alternative and the preferred maximum benefit alternative. The preferred maximum benefit alternative assumes that 10,000 acre-ft of replenishment water will be recharged into the Beaumont MZ with a 50/50 mix of recycled water and SPW. The preferred option also assumed that 5,100 acre-ft of non-potable supply of a 50/50 mix of SPW and recycled water would be used within the Beaumont MZ. The TDS quality of recycled water, to be provided by the City of Beaumont Wastewater Treatment Plant (WWTP), was assumed to have an average TDS concentration of 550 mg/L, and the imported water was assumed to have a TDS concentration of 290 mg/L.

The Regional Board adopted the maximum benefit proposals in 2004 (Resolution No. R8-2004-0001), assigning STWMA and the City of Beaumont the responsibility for implementing the maximum benefit commitments in the Beaumont MZ. The commitments include building desalting facilities when either of the following occurs:

- When the five-year average TDS concentration in recycled water produced by the Beaumont WWTP is 10 mg/L less than its current TDS limit (490 mg/L), or
- When the volume-weighted TDS concentration in the Beaumont MZ rises to within 10 mg/L of the maximum benefit TDS objective of 330 mg/L.

Resolution No. R8-2004-0001 also specifies similar maximum benefit implementation programs for the Yucaipa and San Timoteo MZs. Yucaipa Valley Water District (YVWD) is responsible for implementation of the maximum benefit commitments for the Yucaipa MZ, and is jointly responsible for implementing the maximum benefit commitments for the San Timoteo MZ along with the City of Beaumont and STWMA.

Permitting Issues

Since 2009, the Beaumont Cherry Valley Water District (BCVWD) has been working with Regional Board staff to obtain a recycled water permit to utilize various sources of water for non-potable use and for recharge in the Beaumont MZ. BCVWD is proposing to use recycled water from both the Yucaipa Valley Water District (YVWD) and the City of Beaumont, local groundwater, and imported SWP water. The ranges of anticipated flow and water quality for the YVWD recycled water and local groundwater for the near term (2015) and long term (2035), are described in a June 2, 2010 letter report submitted by BCVWD, which is attached as Exhibit A. These "new" sources of water – the YVWD recycled water and local groundwater – were not considered in the original model projections and analyses conducted by WEI in 2002. Therefore, the water quality impact of these "new" sources on the Beaumont MZ is unknown.

The City of Beaumont is also working with Regional Board staff to renew and update their Waste Discharge Requirements (WDRs) to increase the discharge from 4 MGD (approximately 4,484 acre-ft/year) to 8 MGD (8,968 acre-ft/year). Concurrently, YVWD has requested revisions to their WDRs to correct an error in the TDS limit for recycled water used for irrigation, and to include a provision allowing for the recharge of recycled water into the Beaumont MZ. YVWD's proposed irrigation use and recharge of recycled water in the Beaumont MZ was not considered in the original analysis by WEI, and the impact of these discharges needs to be evaluated.

September 13, 2010
WC Sec. 13267 Order re Beaumont MZ

Page 3 of 5

Basin Plan Amendment Issues

As previously indicated, the Basin Plan specifies that STWMA and the City of Beaumont are responsible for implementing the maximum benefit commitments related to the Beaumont MZ. However, with the dissolution of STWMA, the responsibilities for carrying out the maximum benefit commitments in the Beaumont MZ need to be re-assessed. Some STWMA members, including BCVWD, the City of Beaumont and YVWD, continue to have and/or have expressed new interest in water management activities, including the use/increased use of recycled water, in the Beaumont MZ. Given this, it is necessary to reconsider the assigned responsibilities for implementing maximum benefit commitments for the Beaumont MZ. One STWMA member, South Mesa Water Company, has no interest in the Beaumont MZ, and should not be included in the maximum benefit program. In sum, the Basin Plan needs to be revised to incorporate changes in water resource and salt management, and maximum benefit implementation in the Beaumont MZ. To do so, an updated modeling analysis is necessary. It should be noted that this analysis is necessary in any case to support current permitting requests, described above. The analysis must include an assessment of salt liabilities by these agencies under the different management scenarios so that the responsibilities for maximum benefit implementation can be properly assigned.

Required Submittals

Consistent with the Salt Management Plan, you are hereby required to submit an updated analysis for the Beaumont MZ to the Regional Water Board as soon as possible, but no later than November 30, 2010. The analysis must include the following:

- 1) Updated planning information for the use of all sources of water by each agency in the Beaumont MZ. This updated information shall include flow, quality, and recharge or use location;
- 2) An update of the CSRM model to create 30-year TDS and nitrogen projections for the Beaumont MZ based on the full range of recycled water planning scenarios that are being considered; and
- 3) An assessment of the individual and cumulative water quality impact as a result of each agency's water management activities and calculation of the salt liability of all recycled water users in Beaumont MZ

The model analysis that is conducted must be consistent with the model analysis that was performed as part of the 2002 maximum benefit proposal.

We recommend that BCVWD, YVWD and the City of Beaumont conduct a single joint analysis. However, if each agency chooses to submit a separate analysis, it must include an assessment of all planned water uses by all agencies and include all the elements identified above.

Need for Technical Report

The Regional Water Board is charged with the protection of water quality in this Region. Unless properly managed, the discharge of salt or nitrogen as a result of water management activities in Beaumont MZ has the potential to contribute to the degradation of water quality and adversely affect beneficial uses. The technical report required by this Order is needed to determine the contribution of

September 13, 2010
WC Sec.13267 Order re Beaumont MZ

Page 4 of 5

salt and nitrogen from water use and water resource management activities. The data and information will assist efforts to carry out implementation of the maximum benefit program, as set forth in the Basin Plan, in the Beaumont MZ.

Evidence Supporting the Need for the Technical Reports

Monitoring and modeling conducted to develop the maximum benefit programs demonstrated that water management activities (e.g., irrigation use and recharge of recycled water) discharge salt and nitrogen to the Beaumont MZ. The evidence demonstrating that water management activities are sources of salt and nitrogen discharges is contained in letter report from STWMA "Revised San Timoteo Watershed Management Authority proposal for new total dissolved solids (TDS) and total inorganic nitrogen (TIN) water quality objectives for the Beaumont, San Timoteo, and Yucaipa management zones based on maximum beneficial use", and Exhibit A - TDS Budget Table, June 2002, and a letter report from BCVWD "Estimated Recycled Water and Imported Water Needs to Support Groundwater Quality Evaluation", June 2010. Based on these analyses, the three agencies have discharged, or are planning discharges that do and could potentially contribute salt and nitrogen loads in Beaumont MZ.

Burden and Cost of Technical Reports

The estimated cost of a single joint analysis is \$36,000 (as reflected in the proposal to BCVWD and the City of Beaumont by WEI dated August 12, 2010). The three agencies can choose to share the cost of a single analysis and report, or prepare separate analyses and reports on their own. Logically, the cost of three separate analyses and reports will be higher. Since the analysis requires data and information from all three agencies, if the analysis is conducted separately for each agency, Regional Board staff estimates the total cost could potentially be \$36,000 per agency for a total of \$108,000.

Regardless of whether a single or combined analytical approach is selected, the costs of the technical reports required by this Order are justified. Without this information, we will not be able issue WDRs in a timely fashion. The preparation of the above report is also necessary to provide for continued implementation of the maximum benefit objectives for the Beaumont Management Zone.

Penalties

Though we are confident you will make every effort to comply with this Order in a timely manner, please be advised that pursuant to section 13268 of the California Water Code, failure to submit the required information by the specified compliance date, or falsifying any information provided therein, is a misdemeanor and may result in civil liability. Noncompliance may subject you to administrative civil liability in the amount of up to \$1,000 for each day of violation. Compliance with this Order is not a substitute for compliance with other applicable laws and does not preclude action to enforce compliance with such other laws.

Appeal

Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with section 13320 of the California Water Code and Title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. The State Board's website (<http://www.swrcb.ca.gov/wqpetitions/index.html>) contains detailed information regarding the petition process. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected

September 13, 2010
WC Sec.13267 Order re Beaumont MZ

Page 5 of 5

by this Order may request the Regional Water Board to reconsider this Order. To be timely, such a request must be received within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a timely petition with the State Water Board is also necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

If you have any questions regarding the Order, or wish to schedule a meeting to discuss, please contact, Dr. Cindy Li, Engineering Geologist, at (951) 782-4906 or cli@waterboards.ca.gov.

Sincerely,



- Joanne E. Schneider
Division Chief

cc: Regional Board
David Rice, Office of Chief Counsel, SWRCB, DavidRice@waterboards.ca.gov

Attachment: Exhibit A - Estimate of Recycled Water and Imported Water Needs in support of
Groundwater Quality Evaluation for Cherry Valley Water District Recycled Water Permit

**Proposed Regional Groundwater and Surface Water Monitoring
Program for the Beaumont Management Zone, the San Timoteo
Management Zone and the Yucaipa Management Zone**

The attached monitoring plan is currently being reviewed by the participating agencies.
The document will be enhanced to include additional monitoring to demonstrate
full compliance with the "maximum benefit" objectives based on the
results of the meeting conducted on September 13, 2011.

DRAFT MONITORING PROGRAM - SUBJECT TO MODIFICATION

**Maximum Benefit Surface and Groundwater Monitoring Program
for the Yucaipa, Beaumont and San Timoteo Management Zones**

On January 22, 2004, the Santa Ana Regional Water Quality Control Board amended the Basin Plan with regard to TDS/Nitrogen Management in the Santa Ana River Watershed. In the Basin Plan amendment the Regional Water Quality Control Board found that appropriate beneficial use protection/maximum benefit demonstrations were made by the Yucaipa Valley Water District and the San Timoteo Watershed Management Authority to justify establishing alternative "maximum benefit" objectives for the Beaumont, San Timoteo and Yucaipa Groundwater Management Zones.

As part of the maximum benefit commitments, the Yucaipa Valley Water District, the members of the San Timoteo Watershed Management Authority, and the City of Beaumont have agreed to administer extensive and ongoing surface and groundwater monitoring programs in the Beaumont, San Timoteo, and Yucaipa Management Zones. With the dissolution of the San Timoteo Watershed Management Authority, it has become necessary to fully reevaluate the groundwater and surface water monitoring program and directly assign monitoring responsibilities to the City of Banning, City of Beaumont, Beaumont Cherry Valley Water District, the San Geronio Pass Water Agency, and the Yucaipa Valley Water District.

The following monitoring program has been developed to provide a common sense approach to ongoing water resource monitoring currently performed by each agency.

**Beaumont, San Timoteo and Yucaipa Management Zone
Surface Water Monitoring and Sampling Program**

Surface water in the Yucaipa Management Zone is monitored for ground water recharge. Recharge by Yucaipa Valley Water District consists of State Project Water disbursement into either the Wilson Creek or Oak Glen spreading basins. Total recharge is determined by the amount of Imported State Water purchased and water quality samples are collected monthly for the duration of the discharge. The parameters for water quality are listed in Table 2. Storm water is monitored in a similar manner.

Pre-established surface water monitoring sites in the Beaumont, Yucaipa and San Timoteo Watershed are monitored bi-weekly for total discharge and field measurements (Table 2) consisting of temperature, pH, electrical conductivity, and dissolved oxygen content. Water quality samples are collected and analyzed for total inorganic nitrogen using ammonia, nitrate and nitrite as the dominant nitrogen species. Samples are also analyzed for total dissolved solids and turbidity. Additional alterations to current sites are provided in footnotes to Table 1.

Surface water monitoring in the San Timoteo Management Zone is performed on a bi-weekly schedule. Discharge and field measurements are taken at each location and a water quality sample is collected for analysis of the parameters listed in Table 2.

DRAFT MONITORING PROGRAM - SUBJECT TO MODIFICATION

Table 1: Surface Water Monitoring Sites in Beaumont, San Timoteo, and Yucaipa Management Zones			
Site ID	Site Name	Discharge Description	Monitoring Agency
San Timoteo Management Zone			
YVWD-A	Above YVWD Recycled Water Discharge	San Timoteo Creek	YVWD
YVWD WWTP	YVWD Wastewater Treatment Facility	Recycled Water Effluent	YVWD
YVWD-B	Above confluence with Yucaipa Creek	San Timoteo Creek	YVWD
YVWD-C	Above levy system and concrete channel	San Timoteo Creek	YVWD
YVWD-D†	Concrete Channel at Barton Road	San Timoteo Creek	YVWD
YVWD-E	11055700 Gage	San Timoteo Creek	YVWD
YVWD-F	Santa Ana River above confluence	Santa Ana River	YVWD
YVWD-G	11059300 Gage, below confluence	Santa Ana River	YVWD
STWMA-2	San Timoteo Canyon Rd's 1 st crossing w/ San Timoteo Creek	San Timoteo Creek & Ground water	Beaumont
Beaumont Management Zone			
BWWTP	Beaumont Wastewater TP #1	Recycled Water Effluent	Beaumont
STWMA-1*	Confluence of Noble and Marshal creeks	San Timoteo Creek	BCVWD
STWMA-3	Coopers Creek below BWWTP outfall	Coopers Creek	Beaumont
STWMA-4*	Above confluence w/ Noble Creek	Little San Gorgonio Creek	BCVWD
STWMA-5*	Above confluence w/ Marshal Creek at BCVWD recharge site	Noble Creek	BCVWD
STWMA-6/8	At Devil's Canyon	State Project Water	SGPWA
BMZ-5	Un-named creek behind Lowe's Distribution Center w/ mountain front runoff into BCVWD recharge facility	Un-named creek/stormwater runoff	BCVWD
STWMA-7	Oak Glen Road above entrance to BCVWD recharge facility	Stormwater/recharge	Beaumont
BMZ-6	At SGPWA recharge facility for State Project Water on Noble Creek	Noble Creek	BCVWD
BMZ-1	At Brookside Ave.	Mountain View Channel	BCVWD
BMZ-2	Stormwater detention pond @ Highland Springs & Eighth St	Stormwater/recharge	Beaumont
BMZ-3	Stormwater detention pond on Eighth St E/o Cherry Ave	Stormwater/recharge	Beaumont
BMZ-4	Where Smith Creek crosses Wilson St.	Smith Creek	Banning
Yucaipa Management Zone			
YMZ-1	Wilson and/or Oak Glen spreading basins	State Project Water for Groundwater recharge	YVWD
YMZ-2	Wilson and/or Oak Glen spreading basins	Stormwater runoff for Groundwater recharge	YVWD

*Previously monitored by City of Beaumont- BCVWD will assume responsibility pending approval by the Regional Board.

†Site has proven problematic for monitoring. Currently surface water entrance into concrete channel is covered with sediment. San Bernardino County Flood Control District estimates channel will be cleared by April 2012. Not recommending site for monitoring.

DRAFT MONITORING PROGRAM - SUBJECT TO MODIFICATION

Table 2: Surface Water Monitoring Program Parameters		
Field Measurements	Bi-weekly water quality samples	Groundwater recharge
Temperature	Total Dissolved Solids (TDS)	Total Dissolved Solids (TDS)
Conductivity	Turbidity	Nitrate-Nitrogen
pH	Ammonia-Nitrogen	
Dissolved Oxygen	Nitrate-Nitrogen	
	Nitrite-Nitrogen	
	Total Inorganic Nitrogen (TIN)	

In addition to these surface sites, results from YVWD's Wochholz Regional Water Recycling Facility (WRWRF) and the City of Beaumont's WWTP no. 1 final effluent monitoring for monthly NPDES reporting and daily discharge are reported (Table 3).

Table 3: Wochholz Regional Water Recycling Facility and Beaumont Wastewater Treatment Plant parameters reported for surface water monitoring program			
Monthly WWTP reporting		Quarterly WWTP reporting	
Ammonia-Nitrogen	Arsenic	Barium	Boron
Nitrate-Nitrogen	Cadmium	Calcium	Cobalt
Nitrite-Nitrogen	Copper	Carbonate	Bicarbonate
Total Inorganic Nitrogen (TIN)	Lead	Chloride	Fluoride
12-month Average TIN	Iron	Mercury	Magnesium
Total Dissolved Solids (TDS)	Nickel	Manganese	Selenium
12-month Average TDS	Sodium	Silver	Sulfate
Total Hardness	Aluminum	Total Chromium	
Free Cyanide	Total Organic Carbon, TOC		Zinc
Total Suspended Solids (TSS)	Benzene	Dibromochloromethane	
Bis(2-ethylhexyl)phthalate	Bromodichloromethane		Chloroform

DRAFT MONITORING PROGRAM - SUBJECT TO MODIFICATION

**Groundwater Monitoring and Sampling in the
Beaumont, San Timoteo and Yucaipa Management Zones**

Ground water level measurements are taken monthly for all monitored wells in Beaumont, San Timoteo and Yucaipa Management Zones with one exception. It is not possible to measure ground water level at San Timoteo Management Zone GW-3, a privately owned well. Ground water levels are assumed to be similar to Yucaipa Valley Water District owned well, MW-3, located approximately 50 feet from GW-3. Yucaipa Valley Water District gathers data on ground water level and quality for those wells located within YMZ but not under its direct jurisdiction on an annual basis for inclusion in the annual RWQCB report.

**Table 4: Groundwater Monitoring Sites in the
San Timoteo Management Zone**

Well ID	Description	Data type	Monitoring Agency
MW-1 (1221779)	San Timoteo Canyon Rd.	Level only	YVWD
MW-2 (1221780)	Alessandro St.	Level & Quality	YVWD
MW-3 (1221781)	Live Oak/San Timoteo Canyon	Level & Quality	YVWD
MW-4 (1221782)	above WWTP outfall pipe	Level & Quality	YVWD
MW-5A (1222103)	San Timoteo Canyon Rd.	Level & Quality	YVWD
MW-5B (1222104)	San Timoteo Canyon Rd.	Level & Quality	YVWD
MW-5C (1222105)	San Timoteo Canyon Rd.	Level & Quality	YVWD
GW-3 (1222106)	Live Oak/San Timoteo- Private well	Quality Only	YVWD
GL-8 (1201605)	San Timoteo Canyon Rd-orchard	Level only	YVWD
GL-6 (1003044)	O. Hudson property on Live Oak Canyon Rd	Level & Quality	YVWD
BH-9 (1220051)	1.25" pvc pipe-Live Oak Canyon	Level & Quality	YVWD
Heartland well (1208660)	Owned by City of Beaumont	Level & Quality	Beaumont
San Tim-1 (1222061)	Owned by City of Beaumont	Level & Quality	Beaumont
San Tim-2B/1 (1222079)	Owned by City of Beaumont	Level & Quality	Beaumont
San Tim-2B/2 (1222080)	Owned by City of Beaumont	Level & Quality	Beaumont
1207756	East Valley Golf Club: 335645117024201	Level only	Beaumont
Well 2 (1201582)	Fisherman's Retreat	Level & Quality	Beaumont
Well 1 (1003079)	Fisherman's Retreat	Quality Only	Beaumont
ONE (1003049)	El Casco Lake Ranch	Level & Quality	Beaumont
1003049 (1003048)	Chester Hildebrand property	Level only	Beaumont
BH-19 (1220052)	Metropolitan Water District well	Level & Quality	Beaumont
Well 1 (1201539)	MCM poultry	Level & Quality	Beaumont

DRAFT MONITORING PROGRAM - SUBJECT TO MODIFICATION

Table 5: Ground Water Monitoring Program Sites in the Yucaipa Management Zone			
Site ID	Monitoring Entity	Site ID	Monitoring Entity
Pendleton	YVWD	WHWC 02A	Western Heights WC
Wilson B	YVWD	WHWC 03	Western Heights WC
YVWD 02	YVWD	WHWC 06B	Western Heights WC
YVWD 05	YVWD	WHWC 09	Western Heights WC
YVWD 06	YVWD	WHWC 10	Western Heights WC
YVWD 07	YVWD	WHWC 11	Western Heights WC
YVWD 10	YVWD	WHWC 12	Western Heights WC
YVWD 12	YVWD	WHWC 14	Western Heights WC
YVWD 13	YVWD	5 th Ave 1	City of Redlands
YVWD 14	YVWD	CHICKNH4	City of Redlands
YVWD 16	YVWD	HOG CYN 2	City of Redlands
YVWD 18	YVWD	Redlands 10	City of Redlands
YVWD 24	YVWD	Redlands 11	City of Redlands
YVWD 25	YVWD	Redlands 12	City of Redlands
YVWD 26	YVWD	Redlands 13	City of Redlands
YVWD 27	YVWD	Redlands 14	City of Redlands
YVWD 27A	YVWD	Redlands 16	City of Redlands
YVWD 28	YVWD	Redlands 17	City of Redlands
YVWD 37	YVWD	Redlands 36	City of Redlands
YVWD 43	YVWD	Redland Hts	City of Redlands
YVWD 44	YVWD	Yucaipa Well	City of Redlands
YVWD 46	YVWD	Y-02	County of San Bernardino
YVWD 49	YVWD	Y-03	County of San Bernardino
YVWD 50	YVWD	Y-04	County of San Bernardino
YVWD 53	YVWD	Y-05	County of San Bernardino
YVWD 54	YVWD	Y-08	County of San Bernardino
YVWD 55	YVWD	Y-09A	County of San Bernardino
YVWD 56	YVWD	Y-09B	County of San Bernardino
GL-1	YVWD	Y-10A	County of San Bernardino
GL-2	YVWD	Y-10B	County of San Bernardino
GL-3	YVWD	Y-11A	County of San Bernardino
GL-4	YVWD	Y-11B	County of San Bernardino
GL-5	YVWD	Y-12	County of San Bernardino
		Y-13	County of San Bernardino
SMWC 01	South Mesa WC	Y-14	County of San Bernardino
SMWC 03	South Mesa WC	Y-15	County of San Bernardino
SMWC 05	South Mesa WC	Y-16	County of San Bernardino
SMWC 07	South Mesa WC	Y-17	County of San Bernardino
SMWC 09	South Mesa WC	Y-18	County of San Bernardino
SMWC 11	South Mesa WC	Y-19	County of San Bernardino
SMWC 12	South Mesa WC	Y-21	County of San Bernardino
SMWC 16	South Mesa WC	Y-22	County of San Bernardino

DRAFT MONITORING PROGRAM - SUBJECT TO MODIFICATION

Table 6: Beaumont Management Zone Ground Water Monitoring Sites.		
Well ID	Description	Monitoring Entity
1	Beaumont Basin Well	BCVWD
3	Beaumont Basin Well	BCVWD
16	Beaumont Basin Well	BCVWD
21	Beaumont Basin Well	BCVWD
22	Beaumont Basin Well	BCVWD
23	Beaumont Basin Well	BCVWD
24	Beaumont Basin Well	BCVWD
25	Beaumont Basin Well	BCVWD
26	Beaumont Basin Well	BCVWD
29	Beaumont Basin Well	BCVWD
4A	Edgar Canyon Well	BCVWD
5	Edgar Canyon Well	BCVWD
6	Edgar Canyon Well	BCVWD
12	Edgar Canyon Well	BCVWD
19	Edgar Canyon Well	BCVWD
MW-1	BMZ Monitoring Well	BCVWD
MW-2	BMZ Monitoring Well	BCVWD
MW-3 Deep	BMZ Monitoring Well	BCVWD
MW-3 Shallow	BMZ Monitoring Well	BCVWD
MW-4 Deep	BMZ Monitoring Well	BCVWD
MW-4 Shallow	BMZ Monitoring Well	BCVWD
MW-5 Deep	BMZ Monitoring Well	BCVWD
MW-5 Shallow	BMZ Monitoring Well	BCVWD
Well 48	YVWD Production Well	YVWD
C2A	City of Banning Source Well	City of Banning
C3	City of Banning Source Well	City of Banning
M3	City of Banning Source Well	City of Banning

Ground water quality (Table 7) is measured annually in San Timoteo Management Zone and according to Title 22 of the California Code of Regulations cycle sampling schedule for production wells in the Yucaipa Management Zone.

Wells are sampled annually until 3 consecutive years of qualifying data are gathered. At which point water quality samples need only be collected on a triennial basis for participation in the recalculation of ambient ground water quality stipulated by the Santa Ana River Basin Plan (2004).

Recharge to Yucaipa Management Zone is either storm water or State Project water and is monitored for total recharge (volume), nitrate and total dissolved solids.

DRAFT MONITORING PROGRAM - SUBJECT TO MODIFICATION

Table 7: Ground Water Monitoring Parameters in Beaumont, San Timoteo and Yucaipa Management Zones		
Field Measurements	Water Quality Parameters	
Temperature	Total Dissolved Solids (TDS)	Chloride
Conductivity	Nitrate-Nitrogen or Nitrate as nitrate	Fluoride
pH	Total Alkalinity (as CaCO ₃)	Potassium
	Carbonate and Bicarbonate	Sodium
	Silica (as SiO ₂)	Sulfate
	Total Hardness (includes Ca and Mg)	

Reporting Requirements

A summary of surface water monitoring activities within the San Timoteo Management Zone is provided to the Santa Ana Regional Water Quality Control Board quarterly. Ground water levels are measured on a monthly basis and reported annually along with ground water quality results.

A complete report of all San Timoteo and Yucaipa Management Zones is combined with the City of Beaumont's similar compilation of their efforts within the Beaumont Management Zone and STMZ; the results are interpreted and presented to RWQCB annually on or before April 15 of each year.

DRAFT MONITORING PROGRAM - SUBJECT TO MODIFICATION

