

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

July 24, 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 Financing 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 – David Marshall Kealy
- Pledge of Allegiance
- Roll Call – Council Members Botts, Franklin, Hanna, Machisic, Mayor Robinson

**II. REPORT ON CLOSED SESSION**

**III. PUBLIC COMMENTS/CORRESPONDENCE**

**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.*

**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 6**

**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 – 07/10/12 (Closed Session). . . . .	1
2.	Approval of Minutes – Regular Meeting – 07/10/12 . . . . .	2
3.	Resolution No. 2012-60, Approving the Retention of Professional Lobbyist Services of Joe A. Gonsalves & Son for Legislative Advocacy and Governmental Affair Representation at the State Level. .	9
4.	Resolution No. 2012-61, Amending Electric Rule #3, Section A, Application Data. . . . .	18
5.	Resolution No. 2012-62, Authorizing the Submittal of the FY 2012-13 Local Transportation Fund (LTF) Claim and Approving the FY 2012/13 – 2014/15 Short Range Transit Plan (S RTP). . . . .	29
6.	Approval of Joint Defense, Indemnification and Confidentiality Agreement between the City of Banning and Pardee Homes . . . . .	90

- 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 FINANCING AUTHORITY.**

**V. CONSENT ITEM**

1.	Resolution No. 2012-002 FA, Confirming Its Intention to Issue Taxable Revenue Bonds to Be Purchased in Limited Offerings by A Partnership with EB-5 Investors to Facilitate Economic Development Projects . . . . .	97
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- Open for Public Comments
- Make Motion

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

**VI. PUBLIC HEARING/REPORTS OF OFFICERS**

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

1. Restated and Amended Operating Covenant between the City of Banning and Diamond Hill Auto Group, Inc.  
Staff Report. . . . . **103**  
Recommendation: **That the City Council adopt Resolution No. 2012-59, Entering into an Economic Development Assistance Program and authorizing the an Amended and Restated Operating Covenant with Diamond Hills Auto Group, Inc.**

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

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

**VIII. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items – City Council

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

**IX. ADJOURNMENT**

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

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

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

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



MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

07/10/2012  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Robinson on July 10, 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  
Duane Burk, Public Works Director  
Zai Abu Bakar, Community Development Director  
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Manager said that City Council will meet in closed session pursuant to the provisions of Government Code Section 54956.9 regarding one case of potential litigation and that Agency Board and City Council will meet in closed session pursuant to the provisions of Government Code Section 54956.8 regarding real property negotiations concerning: 1) Mathewson Properties: 1) 260 W. Ramsey (APN 540-20-2002); 2) 60 S. Third Street (APN: 540-20-2003); and 33 S. San Gorgonio (APN: 540-20-4009); and Banning Airport & Adjacent Properties (APN: 532-130-012, 532-130-011, 532-130-018).

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

Meeting went into closed session at 4:02 p.m. and returned to regular session at 4:27 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:28 p.m.

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Marie A. Calderon, City Clerk

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

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MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

07/10/12  
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the City Council and the Banning Utility Authority was called to order by Mayor Robinson on July 10, 2012 at 5:00 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  
Duane Burk, Public Works Director  
Zai Abu Bakar, Community Development Director  
Leonard Purvis, Police Chief  
Heidi Meraz, Community Services Director  
Marie A. Calderon, City Clerk

The invocation was given by Pastor Ken Spicer, New Creation Church. Mayor Robinson invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Manager reported that the Council met in closed session to discuss real property negotiations concerning the Mathewson Properties: 1) 260 W. Ramsey (APN 540-20-2002); 2) 60 S. Third Street (APN: 540-20-2003); and 33 S. San Gorgonio (APN: 540-20-4009); and Banning Airport and Adjacent Properties (APN: 532-130-012, 532-130-011, 532-130-018) and there was no reportable action taken. There was no discussion regarding potential litigation.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

Henri De Roule, Founder/CEO of the Science and Technology Center updated the Council on the progress of the Center. He stated that they have received their non-profit statement listing them as a public charity. They are proceeding with the finalization of the building design and the exhibits to be in that building and they are negotiating with Mitsubishi in regards to a \$15,000 grant. Mr. De Roule said that the Center is progressing not as fast as he wants but faster than he thought. He thanked the Council for their support.

Dorothy Familetti-McLean representing Pass Area Supporting Soldiers wanted to let everyone know that they are having their donation drive for the troops serving overseas. She listed the places where items can be dropped off. They are also taking monetary donations and they can be sent to: Pass Area Supporting Soldiers, P. O. Box 47, Banning, CA. On Wednesday, July 18<sup>th</sup> they are going to be at the Beaumont Civic Center packing boxes and they will be there to receive donations from 9 a.m. to Noon and if anybody has any names of relative, friends, or anyone serving overseas that you would like a package sent to, you can send those name to P. O. Box 47 and they will make sure that those names are included in the mailing for next Wednesday. Pass Area Supporting Soldiers serves all service persons. If you have any questions, you can call Sandy Bleier at 951-880-7085.

Fred Sakurai resident of Banning stated rather than having a well-orchestrated attack on a letter writer he thinks the city people should start thinking about the topic of that letter, what the contents of that letter was and how good the Pardee Project or the Butterfield Homes would be for the City of Banning. We should think about the City of Banning and not individuals, everything from the building permits when it comes about to the additional students in our schools, think of the city itself and not just individuals. We should give Pardee all the encouragement we can so that they can proceed and go ahead rather than having Highland Springs Resort throw roadblocks in the way just to delay the project and trying to stop it like they actually did with the Black Bench Project. Hopefully Pardee will have enough encouragement and financially backing and that they with it and proceed with the Butterfield Project for the people and the city of Banning.

Doug Hammer, CEO of the Fire Memories Fire Museum addressed the Council stating that they are doing a whole lot better than they thought they would. Everything is going well and they have had so many visitors. When they opened the museum they didn't have any handouts for the children so Banning Fire Services gave them 100 packets to hand out to the children. He said that they ordered 1000 packets and they now have about 25 left and they know that every child that has come through the door has not received a packet. The last group of children that came through the door was 150 from the Boys and Girls Club and they did not receive a packet. They know that every child that has come to the museum has been brought by an adult, parent or grandparent of some kind so that the people they are touching is unbelievable. The events that they have done in and around the area have been so much fun and right now, as he is standing here, he is missing a wedding rehearsal. The wedding is tomorrow at 6:00 p.m. at the museum; what a deal. He thanked the Council for their support.

Charlene Sakurai, 4985 Bermuda Dunes addressed the Council asking about the Cool Centers in Banning and where they are located and she also believes there are cool centers for the animals but she is not quite sure where those are located. Also, tonight she passed by the martial arts building on Ramsey and they have done such a nice job with the façade grant and the monies that the City gave them; it looks wonderful.

Kevin Spicer said he wanted to echo the gentleman's comments and thanked the Council for their support as the church has had an expression in this city for over eight years now. They have worked hard to do their part and not just preach the gospel, which he believes they do

rather well, but in working with the people of this city to help them in many other ways that are outside of church. This year they decided to do a community project once a month in Beaumont and Banning, which is their main campus on Ramsey Street, but this week they are doing a clean up project on their block between 22<sup>nd</sup> Street and 8<sup>th</sup> Street and the City has offered to bring a roll-off and to support in some other ways. They will gather at the Banning campus at 9:00 a.m. The COPS and Clergy Game will be coming up on July 27<sup>th</sup> and this will help our students here in the city get ready to go back to school with backpacks and supplies and things. They will also encourage all the churches involved to make donations towards that, as well as, whatever monies are raised that day. The game will be held at the high school gymnasium with the doors opening at 6:00 p.m. and the game starting about 6:30 p.m. and the cost is \$5.00. He thanked the Council for their support.

CORRESPONDENCE: There was none.

PRESENTATIONS:

Mayor Robinson said that the presentations in regards to the Sunset Grade Separation and the I-10 By-Pass have been postponed and will be announced at a later date.

CONSENT ITEMS

1. Approval of Minutes – Special Meeting – 06/26/12 (Closed Session)

Recommendation: That the minutes of the Special Meeting of June 26, 2012 be approved.

2. Approval of Minutes – Regular Meeting – 06/26/12

Recommendation: That the minutes of the Regular Meeting of June 26, 2012 be approved.

3. 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 on behalf of the Banning Bench Community of Interest Request for An Extension of their Unincorporated Community Status.

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.

Recommendation: 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.

5. Animal Control Field Services Contract between the City of Banning and the City of Beaumont.

4

Recommendation: Receive and place on file this Animal Control Field Services Contract between the City of Banning and City of Beaumont.

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

Recommendation: That 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.

7. Intent to Participate in a Joint Comprehensive Operations Analysis (COA) of the Pass Transit System.

Recommendation: Approve the participation in a joint Comprehensive Operations Analysis of the Banning and Beaumont public transit systems.

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.

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

9. Resolution No. 2012-58, Approving the Purchase of One (1) 2011 Ford Crown Victoria Police Interceptor Sedan in the Amount of \$24,793.

Recommendation: 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.

**Motion Hanna/Machisic to approve Consent Items 1 through 9.** Mayor Robinson opened the item for public comments. There were none. **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 Utility Authority.

#### CONSENT ITEMS

Both consent items were pulled for discussion.

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.

Councilmember Hanna said that she pulled this since it was due July 13<sup>th</sup> and staff would probably know what you are asking for in the grant.

Duane Burk, Public Works Director said the Department of Water Resources through Prop 84 has authorized some spending to do studies within recharge facilities, basins and other water resource needs within the state of California. The City is applying for is a \$250,000 dollar grant, which is very competitive, to study the Banning Basins as it relates to recharge naturally and possibly what we could do in the future. One of the goals of the Council through the Urban Water Management Plan was to define those basins a little bit more thoroughly as it relates to the safe yield and the ability to recharge those basins.

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

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

Mayor Pro Tem Franklin said she pulled this item because if a person where to read the agenda it sounds very complication and the report is very complex and also has to do with water and she would like staff to tell the public, very briefly, what it is and what it means to residents now and what it means to us in the future.

Director Burk said it is a very complex issue as it relates to understanding the basins and he displayed a map showing the boundary of the Beaumont Management Zone and said there are multiple users private and public. The point about extraction has already been adjudicated by the law so we know what is going to happen in 2014 but tonight what staff is saying is what happens when we put recycled water in use of that basin and when we use recycled water we use additional salts. Currently totally dissolved solids are sometimes referred to as salts. This is kind of a unique regulatory requirement as it relates to the City of Banning because if you read the report what we have done is to join in an agreement through the Santa Ana Regional Water Quality Control Board as it relates to how we will use recycled water over these areas and how we are going to manage the salts in the basin. The other retailers in here are Yucaipa Valley Water District, South Mesa Water, the City of Beaumont, and Beaumont Cherry Valley Water District. What you are adopting tonight is in a five-party agreement that we will manage this basin over a ten-year pilot period and part of this process is an implementation of testing over the next ten years. The caveat is that this can go 20 years as long as we don't exceed the salt requirement. Director Burk went over the requirements and what would happen if you didn't participate.

**Motion Machisic/Franklin to approve Consent Item 2, adopting Resolution No. 2012-10 UA, Authorizing the Implementation of the Regional Maximum Benefit Objectives in the Beaumont Management Zone.** Mayor Robinson opened the item for public comments. There were none. **Motion carried, all in favor.**

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

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

City Council

Mayor Pro Tem Franklin –

- She and Councilmember Botts attended the Regional Water Meeting about a week ago Thursday and many water agencies in the area were in attendance and the good news was that people were there and listening to the presentations but the harder news to accept is the fact that there were some very strong positions there. The presentations had to do with having an allocation plan for water and there are some people that are strongly against it which include the San Gorgonio Pass Water Agency. Director Duane Burk also gave a presentation that day. There will be follow-up meetings coming along but nothing was actually resolved that day. She attended the San Gorgonio Pass Water Meeting yesterday and they talked about what their future plans are and pretty much as a Board they are planning to move forward with a demand plan which means if you ask for the water, whoever asks for it gets the water. They also talked about a need for better communication with not only elected officials but other water boards in the area but it was a little disheartening because they were not really even listening to what the other presentations were. She said she will keep the Council posted on what is going to happen.

Councilmember Hanna –

- She shared some information that she received regarding “Lessons Learned from the Joplin, Missouri Tornado”. What she thought was interesting was that they used “social media” like Facebook and others to spread information in the community for the disaster and disaster relief. It was not the city that actually did this. It was a group of people that decided that they were going to do it and one of the decisions they made was that they check out every piece of information they received before it was put out on the internet to make sure it was correct. We need to learn from other cities and disasters. We know that we will have one; it is just a matter of when and we have had them in the past and will have them again. She wanted to state once again that she is very concerned that the Disaster Council still has not met and she understands the reasons given but doesn’t find them acceptable. She needs to have a feeling of confidence and our community should feel confident that we are indeed prepared when a disaster happens. This is not something we should ignore and not have as a lower priority. There are other pressing issues all the time but we need to pay attention.

Mayor Robinson –

- The entire Council was at the Family Dollar ribbon cutting today and almost all of the staff was also in attendance. They got all the support that we could offer them and he hopes that everybody in the community will support the Family Dollar Store. They have 7,100 stores throughout the United States and they could have made other choices but they chose Banning so it is a privilege to have them here and support them.
- General Dollar Store, one block away to the east, will be opening up probably at the end of this month; July 28<sup>th</sup> is the scheduled date.

- Habitat for Humanity Golf Tournament will be held on August 4<sup>th</sup> and you can call Wendell Bainter for more information at 769-1835.
- August 2<sup>nd</sup> kicks off the “2012 Concert Series” at 7:30 p.m. at the Playhouse Bowl. Concerts are presented every Thursday night during August. Some of the tributes include Elvis, David Bowie, The Eagles, 50’s and 60’s Hits and Patsy Cline. They have a great line up and he hopes everyone will support the Playhouse Bowl Concert Series.

#### City Committee Reports

- Mayor Robinson said that the Disaster Committee needs to fit in here somewhere and we have been waiting for Doug Clark to get trained and he thinks that he has been trained and hopefully we can get this on an agenda soon.

Report by City Attorney - None

Report by City Manager

- The “Cool Center” in Banning is our Community Center.
- Some of you may have received information from Home Emergency a letter on water line insurance and this is private insurance company and has nothing to do with the City of Banning.
- On July 31<sup>st</sup> there will be a Blood Drive and it will be held in the police department parking lot behind city hall for those that may be interested in donating blood.

Mayor Robinson said the other “Cool Center” is at Renaissance Pet Resort and obviously you can bring your pets in during the day if they can’t handle it at home or if you are not going to be at home.

#### 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 5:30 p.m.

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

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





## **CITY OF BANNING**

**DATE:** July 24, 2012

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

**FROM:** Bill R. Manis, Economic Development Director

**SUBJECT:** Adopt Resolution No. 2012-60 for the Retention of the Professional Lobbyist Services of Joe A. Gonsalves & Son for Legislative Advocacy and Governmental Affairs Representation at the State Level

### **RECOMMENDATION:**

That the City Council:

- (1) Adopt Resolution No. 2012-60 (Attachment A) approving the retention of the professional lobbyist services of Joe A. Gonsalves & Son for legislative advocacy and governmental affairs representation at the State level; and
- (2) Authorize the City Manager to sign a Professional Services Agreement between Joe A. Gonsalves & Son and the City of Banning for in an amount not to exceed \$3,300 per month.

### **BACKGROUND/ANALYSIS:**

In 2003, City staff contacted nine (9) legislative consulting firms to inquire about providing State legislative services for the City. Four (4) qualified firms responded and ultimately the City selected the professional legislative services of Joe A. Gonsalves & Son to represent the City. The annual fees associated with the services were \$36,000.

Joe A. Gonsalves & Son has been representing the City since 2003, however, approximately three (3) years back and due to budgetary constraints, the City eliminated the funding for their services. To the credit of Joe A. Gonsalves & Son, they recognized the economically challenging times cities were faced with and they continued to represent the City of Banning free of charge. Now that the national recession is slowly lifting Joe A. Gonsalves & Son is not able to continue working for our City without compensation.

City staff has discussed the need for ongoing State legislative representation and determined that in light of the dissolution of redevelopment agencies ("ABX126") throughout the State of California effective February 1, 2012, the need for cities to be represented at the State level has become extremely important. Ongoing legislation concerning ABX126 has created a need for advocacy at the State level. Recently, the City of Banning has personally experienced the need for advocacy at the State level with the Village at Paseo San Geronio Project and the need for the State Department of Finance to authorize the close of escrow in regards to the transfer of title to the developer. The City reached out to Joe A. Gonsalves & Son to assist in the matter which was favorably resolved for the City/developer within a 48 hour period.

The other benefits associated with retaining the legislative services of our State lobbyist include:


- An advocate to provide a monthly reporting mechanism on bills that have been introduced by the State legislature to keep the City informed and up-to-date on new requirements and policies impacting cities;
- Representation through the lobbyist's relationship with elected officials to influence State legislation;
- Expertise of the legislative process and political landscape at the State Capital;
- An advocate in Sacramento to attend and provide testimony on the City's behalf;
- An advocate to represent the City on issues and matters impacting our City; and
- An advocate to arrange meetings with legislative representatives and elected officials when necessary.

Since 2003, the average annual fees for legislative services for cities have increased. A city the size and population of Banning is approximately \$48,000 per year to represent. Joe A. Gonsalves & Son has updated their existing Agreement with the City and provided a new Agreement outlining the terms (Attachment B). They have agreed to represent the City for \$3,300 per month or \$39,600 per year indefinitely. This amount represents approximately a 20% savings for the City of Banning. Staff has reviewed our budget and determined that the annual fee can be covered by \$15,000 coming from the Electrical Utility Fund and \$24,600 coming from the City's General Fund.

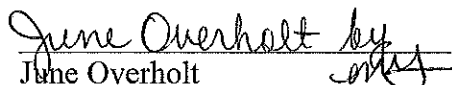
**FISCAL DATA:**

The annual fee of \$39,600 for legislative and advocacy representation will be covered by \$15,000 from the Electric Utility Fund (funds available in account number 670-7000-473-3311) and \$24,600 from the City's General Fund (funds available in account number 001-1000-411.33-11).

**RECOMMENDED BY:**

  
Bill R. Manis  
Economic Development Director


**REVIEWED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**RECOMMENDED BY:**

  
Fred Mason  
Electric Utility Director

**APPROVED BY:**

  
Andy Takata  
City Manager

**Attachments:**

- A. Resolution 2012-60
- B. Legislative Services Agreement

**ATTACHMENT A**  
**RESOLUTION NO. 2012-60**

## **RESOLUTION NO 2012-60**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE RETENTION OF PROFESSIONAL LOBBYIST SERVICES OF JOE A. GONSALVES & SON FOR LEGISLATIVE ADVOCACY AND GOVERNMENTAL AFFAIRS REPRESENTATION AT THE STATE LEVEL**

**WHEREAS**, in 2003, the City of Banning received four bids for from qualified legislative consulting firms to provide the City with legislative advocacy and governmental affairs representation; and

**WHEREAS**, in 2003, the City of Banning selected the professional legislative services of Joe A. Gonsalves & Son; and

**WHEREAS**, since approximately 2009 the City of Banning, due to budgetary constraints, has not paid the monthly/annual retention fee associated with the 2003 Agreement with Joe A. Gonsalves & Son; and

**WHEREAS**, Joe A. Gonsalves & Son has continued to represent the City of Banning on State legislative matters since 2003 without receiving payment for those services since approximately 2009; and

**WHEREAS**, due to the dissolution of redevelopment agencies (ABX126) throughout the State and the ongoing legislative bills and trailer bills being implemented, the need for legislative representation at the State level is imperative; and

**WHEREAS**, Joe A. Gonsalves & Son has provided the City with a new Agreement that has an annual legislative and advocacy representation fee of \$39,600 for an indefinite period of time; and

**WHEREAS**, the City has identified a means to cover the annual fee of \$39,600 with \$15,000 coming from the Electric Utility Fund (funds available in account number 670-7000-473-3311) and \$24,600 coming from the City's General Fund (funds available in account number 001-1000-.33-11).

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

**SECTION 1:** Adopt Resolution No. 2012-60 authorizing the retention of Joe A. Gonsalves & Son to provide the City of Banning legislative and advocacy services.

**SECTION 2:** Authorization the City Manager to sign the Professional Services Agreement between the City of Banning and Joe A. Gonsalves & Son.

**SECTION 3:** This resolution shall take effect immediately upon its adoption by the City Council of the City of Banning.

**PASSED, APPROVED AND ADOPTED** this 24<sup>th</sup> day of July 2012.

---

Don R. Robinson, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk  
City of Banning

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

---

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-60 was adopted by the City Council of the City of Banning, at a regular meeting held on the 24<sup>th</sup> day of July 2012, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

**ATTACHMENT B**  
**AGREEMENT BETWEEN JOE A. GONSALVES & SON**  
**AND**  
**THE CITY OF BANNING**

## AGREEMENT

### BETWEEN JOE A. GONSALVES & SON AND THE CITY OF BANNING

The CITY OF BANNING (hereinafter "CITY") wishes to engage the services of JOE A. GONSALVES & SON (hereinafter "ADVOCATE"), located at 925 L Street, Suite 250, Sacramento, California, to provide services in legislative advocacy and governmental affairs in matters affecting cities in the State of California.

The purpose of this Agreement is to state the terms and conditions under which ADVOCATE will provide services to CITY.

The terms and conditions are limited to the following:

1. ADVOCATE's Scope of Services. ADVOCATE agrees to assume and perform the following duties and responsibilities:
  - a. ADVOCATE is designated and authorized by CITY to act as its official legislative advocate with the California State Legislature and all California State Agencies regarding issues affecting CITY.
  - b. ADVOCATE shall review all legislative bills introduced in the California Legislature and shall inform CITY of all such legislation affecting CITY's interests. ADVOCATE shall forward weekly a copy of all such bills to the CITY.
  - c. ADVOCATE shall assist CITY in identifying and obtaining state funding available for CITY programs and proposed capital projects.
  - d. ADVOCATE shall provide a monthly written summary conducted on behalf of the CITY during the legislative session and at other times if significant activity warrants it.
  - e. ADVOCATE shall arrange meetings with legislative representatives for CITY elected officials and staff when necessary.
  - f. ADVOCATE shall initiate legislative proposals on behalf of the CITY.
  - g. ADVOCATE shall attend and provide testimony on behalf of CITY in legislative hearings when warranted.

2. CITY's Duties and Responsibilities:
  - a. CITY shall analyze and review all legislative bills submitted to it by ADVOCATE and inform ADVOCATE, in writing, of its position on any and all such bills CITY wishes ADVOCATE to pursue.
  - b. CITY shall, on a timely and continuing basis, apprise ADVOCATE of the specific issues and bills it wishes to have analyzed or pursued by ADVOCATE under this Agreement.
  - c. CITY shall, on a timely basis, pay all bills and invoices submitted to it by ADVOCATE.
3. Effective Date and Term. This agreement shall become effective on the 1st day of July, 2012, and shall continue in full force and effect unless and until terminated by CITY and/or by ADVOCATE.
4. Compensation. CITY shall pay to ADVOCATE the monthly sum of \$3,300 (THREE THOUSAND THREE HUNDRED DOLLARS) payable in advance on the first day of each month.
5. Costs and Expenses. CITY shall reimburse ADVOCATE for any travel and/or other expenses directly related to any request by CITY for ADVOCATE to participate in any meetings or activities outside of Sacramento.
6. Attorney's Fees and Costs. If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
7. Indemnification. ADVOCATE agrees to indemnify and hold harmless CITY, its officers, agents and employees from any and all claims and losses accruing or resulting in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by ADVOCATE's performance of this Agreement as a result of the sole negligence of ADVOCATE and totally without fault to the CITY, its officers, agents or employees.
8. Governing Law. This Agreement shall be governed by the laws of the State of California.
9. Entire Agreement/Severability. This Agreement has 3 (THREE) pages. It constitutes the entire Agreement between parties regarding its subject matter. If any provision of this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.



AGREEMENT CITY OF BANNING

Page 3 of 3

10. Notice of Termination.

- a. Notice of termination under this Agreement by ADVOCATE shall be given to CITY by certified mail to the following address:

Andy Takata  
City Manager  
99 East Ramsey Street  
Banning, CA 92220

- b. Notice of termination under this Agreement by CITY shall be given at the following address:

Joe A. Gonsalves & Son  
925 L Street, Suite 250  
Sacramento, CA 95814.

11. Amendments. The Agreement may be modified or amended only by a written document executed by both ADVOCATE and CITY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as follows:

JOE A. GONSALVES & SON

DATED: \_\_\_\_\_ BY \_\_\_\_\_

THE CITY OF BANNING

DATED: \_\_\_\_\_ BY \_\_\_\_\_

## CITY COUNCIL AGENDA

**DATE:** July 24, 2012

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

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

**SUBJECT:** Amending Electric Rule #3 – Section A, Application Data – Resolution No. 2012-61

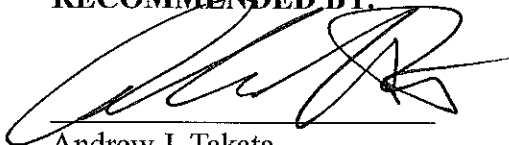
**RECOMMENDATIONS:** That the City Council adopt Resolution No. 2012-61, approving an amendment to Resolution No. 1975-23, adding two new application data requirements to the existing thirteen items contained in the Resolution.

**JUSTIFICATION:** The City desires to amend the current Electric Rules and Regulations, Electric Rule #3 – Application Data, to include additional requirements for a new applicant.

**BACKGROUND:** Resolution 1975-23 established certain Electric Rules and Regulations for the provision of electric service within the City of Banning. An update to Electric Rule # 3 is required to include a current practice already in place when establishing accounts for new applicants. Attachment #3 outlines the two new items.

**FISCAL DATA:** The adoption of Resolution No. 2012-61 does not fiscally impact the City of Banning.

**RECOMMENDED BY:**



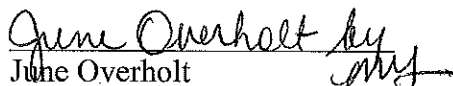
Andrew J. Takata  
City Manager

**PREPARED BY:**



Stacy Bayol  
Utility Financial Analyst

**REVIEWED BY:**



June Overholt  
Deputy City Manager/  
Administrative Services Director

**Attachments:**

1. Resolution No. 2012-61
2. Resolution 1975-23, Electric Rule #3, existing
3. Electric Rule #3 with changes noted.

**ATTACHMENT 1**  
**RESOLUTION NO. 2012-61**

**RESOLUTION NO. 2012-61**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, AMENDING ELECTRIC RULE #3 – SECTION A,  
APPLICATION DATA**

**WHEREAS**, Resolution No. 1975-23 established certain Electric Rules and Regulations for the provision of electric service within the City of Banning; and

**WHEREAS**, it is desired to add two additional items to Electric Rule # 3, Application for Service under Application Data.

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

Section 1: The above Recitals are true and correct and incorporated into the terms and findings of this Resolution by this reference.

Section 2: Electric Rule #3 – Application for Service – Application Data add the following items:

- Proof of ownership or authorization of tenancy.
- Persons, firms and corporations conducting business within the service area for the City of Banning must have a current business license prior to establishment of utility services.

**PASSED, APPROVED AND ADOPTED** this 24th day of July 2012.

---

Don R. 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. 2012-61 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 24th day of July, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**ATTACHMENT 2**  
**RESOLUTION NO. 1975-23**  
**Electric Rule #3**

RULES AND REGULATION

ELECTRIC RULE #3

APPLICATION FOR SERVICE

A. APPLICATION DATA

Each applicant for electric service in the City of Banning and contiguous territory, served by the Department may be required to sign an application on a form provided by the Electric Department and will be required to furnish the following items before service can be provided.

1. Name and address of applicant.
2. Name and address of property owner.
3. Applicants Drivers License number
4. Applicants Social Security number.
5. Address of premises to be served.
6. Unit service will be connected.
7. Service use and rate schedule applied.
8. Has premises been served previously or does it require a service drop.
9. Main switch capacity.
10. Information required to establish credit. Rule and Regulation #5.
11. Is service single phase or three phase.
12. Any other reasonable information the Department may require to provide service.
13. Pay connection charge as required.

This application is merely a request for service and does not in itself bind the Department to serve, except under reasonable conditions, nor does it bind the applicant to take service for a longer period than the minimum requirements of the rate.

B. INDIVIDUAL LIABILITY FOR JOINT SERVICE

Two or more persons who jointly apply for service on one application or contract shall be jointly and severally liable there under and shall be billed by a single bill for each billing period.

- C. A customer who is planning changes in the number, size or type of utilization of equipment, or of operation changes which will change the demand on the service equipment, shall notify the Department in advance as to the nature of the change and to the extent of the change.

D. INSPECTION

Before service may be connected to a new building, or to existing service equipment which may have been altered or modified, a complete and approved inspection must be made by the authorities having jurisdiction, and a copy of or approval submitted to the Department by the Building Department.

- E. No new service will be extended to a premises until all previous delinquencies as to that premises have been paid.



CITY OF BANNING - ELECTRIC DEPARTMENT  
RULES AND REGULATIONS #3

F. No service will be extended to a customer at a new location until all bills at a prior address have been paid in full.

G. CONNECTION PERIOD

Electric service will be connected on the first working day after completion of Rule and Regulation #3, #4, #5, and #6.

No connections or reconnections will be made on weekends, holidays, or after hours.

**ATTACHMENT 3**  
**ELECTRIC RULE #3**  
**Amended Version**

RULES AND REGULATION

ELECTRIC RULE #3

APPLICATION FOR SERVICE

A. APPLICATION DATA

Each applicant for electric service in the City of Banning and contiguous territory, served by the Department may be required to sign an application on a form provided by the Electric Department and will be required to furnish the following items before service can be provided.

1. Name and address of applicant.
2. Name and address of property owner.
3. Applicants Drivers License number
4. Applicants Social Security number.
5. Address of premises to be served.
6. Proof of ownership or authorization of tenancy.
7. Unit service will be connected.
8. Service use and rate schedule applied.
9. Has premises been served previously or does it require a service drop.
10. Main switch capacity.
11. Information required to establish credit. Rule and Regulation #5.
12. Is service single phase or three phase.
13. Persons, firms and corporations conducting business within the service area of the City of Banning must have a current business license in order to establish utility services.
14. Any other reasonable information the Department may require to provide service.
15. Pay connection charge as required.

This application is merely a request for service and does not in itself bind the Department to serve, except under reasonable conditions, nor does it bind the applicant to take service for a longer period than the minimum requirements of the rate.

B. INDIVIDUAL LIABILITY FOR JOINT SERVICE

Two or more persons who jointly apply for service on one application or contract shall be jointly and severally liable there under and shall be billed by a single bill for each billing period.

- C. A customer who is planning changes in the number, size or type of utilization of equipment, or of operation changes which will change the demand on the service equipment, shall notify the Department in advance as to the nature of the change and to the extent of the change.

D. INSPECTION

Before service may be connected to a new building, or to existing service equipment which may have been altered or modified, a complete and approved inspection must be made by the authorities having jurisdiction, and a copy of or approval submitted to the Department by the Building Department.

CITY OF BANNING  
ELECTRIC DEPARTMENT

ADOPTED July 24 2012  
RESOLUTION NO. 2012-61  
BY CITY COUNCIL

RULES AND REGULATION

- E. No new service will be extended to a premises until all previous delinquencies as to that premises have been paid.

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** July 24, 2012

**TO:** City Council

**FROM:** Heidi Meraz, Community Services Director

**SUBJECT:** RESOLUTION NO. 2012-62, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE SUBMITTAL OF THE FY 2012-13 LOCAL TRANSPORTATION FUND (LTF) CLAIM AND APPROVING THE FY 2012/13 – 2014/15 SHORT RANGE TRANSIT PLAN (SRTP)

**RECOMMENDATION:** “The City Council approve Resolution No. 2012-62, authorizing the submittal of the FY 2012-13 Local Transportation Fund (LTF) in the amount of \$1,170,105 and approving the FY 2012/13– 2014/15 Short Range Transit Plan (SRTP)”.

**JUSTIFICATION:** LTF dollars are needed to fund the operation of the City’s fixed route and paratransit service systems. The SRTP is prepared annually and justifies the amount of funding being requested from the Riverside County Transportation Commission (RCTC). The plan, as well as the required funding sources, has already been approved by RCTC.

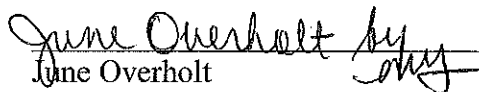
**BACKGROUND:** The City operates three fixed routes and a paratransit service. The Riverside County Transportation Commission (RCTC) allocates LTF dollars to the City each year to cover the transit system’s operating costs. A claim form must be submitted annually to RCTC in order for the funds to be released to the City. The SRTP should be approved by the Council as part of the claim submittal process.

**FISCAL DATA:** The Fiscal Year 2012-13 LTF transit claim total of \$1,170,105.00 along with fare box recovery will fund the operating expenditures for both the City’s fixed route transit and paratransit services.


**RECOMMENDED BY:**

  
Heidi Meraz  
Community Services Director

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2012-62**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AUTHORIZING THE SUBMITTAL OF THE FY 2011-12 LOCAL TRANSPORTATION  
FUND (LTF) CLAIM AND APPROVING THE FY 2012/13-14/15 SHORT RANGE  
TRANSIT PLAN (SRTP)**

**WHEREAS**, the City of Banning annually receives an allocation of Local Transportation Funds to operate the City's transit and dial-a-ride services;

**WHEREAS**, a claim form and standard assurances must be submitted to Riverside County Transportation Commission in order to receive the allocated LTF; and

**WHEREAS**, the Short Range Transit Plan is prepared annually as justification for the LTF Funding request; and

**WHEREAS**, the Short Range Transit Plan should be approved as part of the claim submittal process.

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

SECTION 1. The City Council of the City of Banning hereby authorizes the Community Services Director to execute and submit the Fiscal Year of 2012-13 LTF Public Transit Claim in the amount of 1,170,105.00 on behalf of the City of Banning.

SECTION 2. The City Council approves the FY 2012/13-14/15 Short Range Transit Plan.

SECTION 3. The Administrative Services Director is authorized to make any budget adjustments related to this resolution.

**PASSED, APPROVED, AND ADOPTED** this 26<sup>th</sup> 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:**

---

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-62, was duly adopted by the City Council of Banning, California, at a regular meeting thereof held on the 24th day of July, 2012, by the following vote, to wit:

AYES:

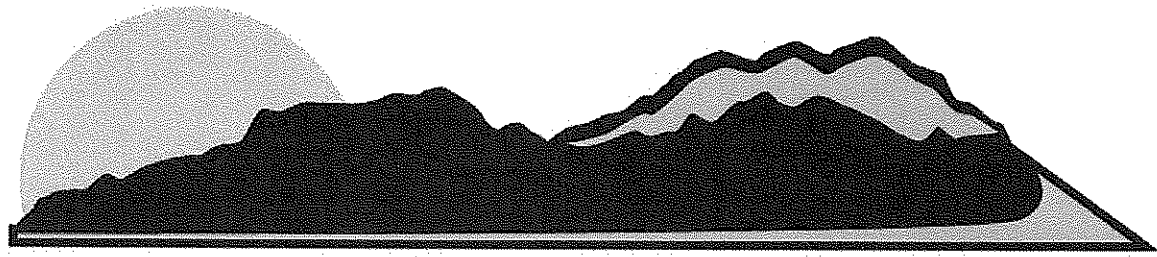
NOES:

ABSENT:

ABSTAIN:

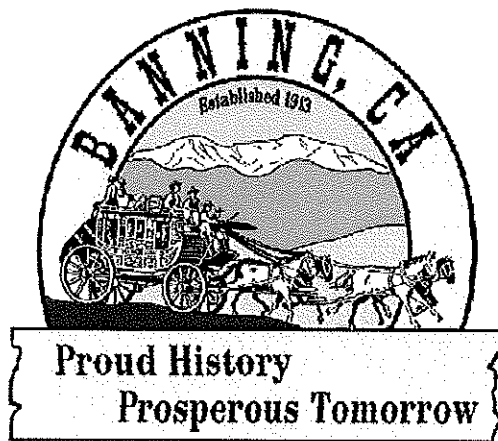
---

Marie A. Calderon, City Clerk  
City of Banning



# PASSTRANSIT

**City of Banning/Beaumont  
SHORT RANGE TRANSIT PLAN  
FY 2012/13 - FY 2014/15**





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## **CHAPTER 1 – SYSTEM OVERVIEW**

The Pass Transit System is the result of a cooperative effort between the City of Banning (Banning Municipal Transit System) and the City of Beaumont (Beaumont Municipal Transit Agency). The Pass Transit System consists of two independent, but well coordinated, transit systems. The coordinated service area of Pass Transit includes the cities of Banning, Beaumont and Calimesa, the unincorporated areas of Cabazon and Cherry Valley, and the commercial area of the Morongo Band of Mission Indians Reservation. Both fixed route and dial-a-ride services are provided throughout the service area.

There are three major thoroughfares passing through the Pass Area including Interstate 10, State Highway 60, and Route 79.

Major employers within the area include the Casino Morongo, Lowe's Distribution Center, Beaumont and Banning Unified School Districts, San Geronio Memorial Hospital, 2<sup>nd</sup> Street Marketplace which includes the WalMart Supercenter, Desert Hills Premium Outlets, and several manufacturing companies.

Pass Transit was created as a combined effort between Banning Transit System and Beaumont Transit System started in November 2004. Routes 1 and 2 were modified from the previous Banning Transit System Cabazon Route and Beaumont Transit System Route 1. Banning's Northern Route was renumbered Route 5 and Banning's Southern Route was renumbered Route 6. Beaumont's existing Routes 3 and 4 remained the same. A Memorandum of Understanding was developed to allow each city's Dial-A-Ride services to cross jurisdictional boundary lines so that a passenger did not have to transfer. A new joint Rider's Guide was developed, combined transfers and ten-ride ticket books were printed, buses and bus stop signs were decaled 'Pass Transit' and fares were established to be the same for the convenience of riders.

Within the service area of Pass Transit there are ten elementary schools, three middle schools, two intermediate schools and two high schools as well as one community day school, two alternative high schools, two adult education schools, one private school and Mt San Jacinto Community College Pass Campus.

Four fifty-five plus communities and various mobile home parks are also served by Pass Transit, oftentimes providing a vital link to necessary medical services at the San Geronio Memorial Hospital, as well as Beaver Medical Group, Loma Linda Medical Offices and Rancho Paseo Medical Group.

It should be noted that this Short Range Transit Plan incorporates the elements of the Pass Area Transit Plan that addresses service within the system's service area. Although the majority of this plan will be a joint effort, tables and charts will be submitted individually based on the stats of each system. Even though the two transit service providers operate closely in providing a seamless service to the residents of the Pass Area, the transit agencies are separate entities. Nothing in this document is intended to indicate anything more than a cooperative effort between the two transit systems.

The two cities meet regularly to discuss the future of Pass Transit and several options are being explored at this time.

### **Population Profile and Demographic Projections**

The latest available statistics from the California Department of Finance show residential population within Beaumont and the entire Pass Transit System's service area had a 13% increase from year 2009 (32,500) to year 2010 (36,877). The unincorporated area of Cherry Valley had a population of 6,362 residents in 2010. In 2008 and 2010, Beaumont was named the second fastest growing city in the State of California with a 224% increase from 2000 to 2010. This coincides with Riverside County being the fastest growing county in the state in 2010 with a 42% increase over the year 2000.

The 2010 census indicated that the Beaumont community is ethnically diverse with a makeup of: Caucasian (63%), Hispanic (40%), Black (6%), Asian and Pacific Islander (8%), and all other races (16%). Senior citizens (age 65+) make up 11% of the population, indicating a potential for growth in the demand for Dial-A-Ride services and a slight growth in Fixed Route services. Youth (age 18 and under) also make up a substantial portion of the population (30%).

The 2010 census showed the median household income within Beaumont was \$34,254, well below the national average of \$41,994. This indicates the potential of an exceptional need for transit services. However, in 2007, the average home price was \$322,500 noting a high percentage of two-income families and a much higher median household income than reported at the 2000 census. This translates to less of a need for transit services today than in previous years on much of Beaumont's system.

Finally, it is important to note that Beaumont's Route 2 stretches into Cabazon and the City of Banning, where 14% of households are below poverty level, according to the 2000 census, indicating the presence of a number of transit dependent individuals specifically on that route.

The 2010 United States Census<sup>[4]</sup> reported that Banning had a population of 29,603. The population density was 1,282 people per square mile (494.8/km<sup>2</sup>). The racial makeup of Banning was 19,164 (64.7%) White, 2,165 (7.3%) African American, 641 (2.2%) Native American, 1,549 (5.2%) Asian, 39 (0.1%) Pacific Islander, 4,604 (15.6%) from other races, and 1,441 (4.9%) from two or more races. Hispanic or Latino of any race was 12,181 persons (41.1%).

The Census reported that 28,238 people (95.4% of the population) lived in households, 254 (0.9%) lived in non-institutionalized group quarters, and 1,111 (3.8%) were institutionalized.

There were 10,838 households, out of which 3,083 (28.4%) had children under the age of 18 living in them, 5,106 (47.1%) were opposite-sex married couples living together, 1,488 (13.7%) had a female householder with no husband present, 592 (5.5%) had a male householder with no wife present. There were 700 (6.5%) unmarried opposite-sex partnerships, and 75 (0.7%) same-sex married couples or partnerships. 3,092 households (28.5%) were made up of individuals and 2,085 (19.2%) had someone living alone who was 65 years of age or older. The average household size was 2.61. There were 7,186 families (66.3% of all households); the average family size was 3.19.

The population was spread out with 6,777 people (22.9%) under the age of 18, 2,730 people (9.2%) aged 18 to 24, 6,048 people (20.4%) aged 25 to 44, 6,387 people (21.6%) aged 45 to 64, and 7,661 people (25.9%) who were 65 years of age or older. The median age was 42.3 years. For every 100 females there were 93.4 males. For every 100 females age 18 and over, there were 90.7 males.

With the median household income being \$36,268, and the median family income being \$41,585 there is a significant need for public transportation within the City of Banning.

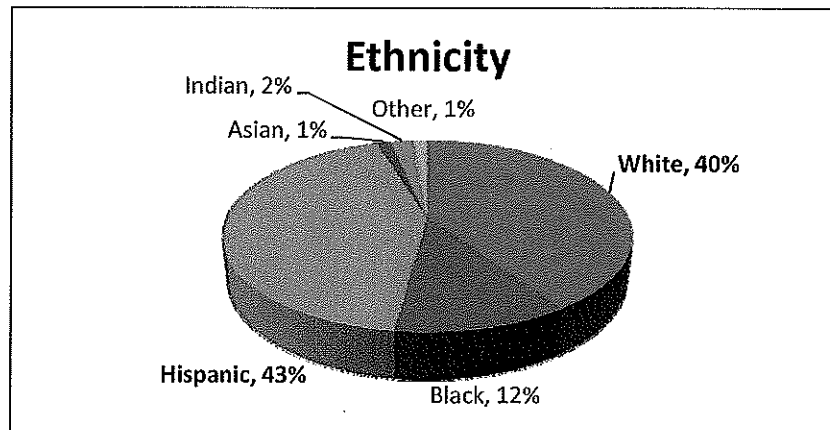
### **Ridership Demographics**

This section provides demographic information that shows our passenger profile including the gender, age, ethnicity, and income of the riders. Data available is from ridership surveys taken from 2010 to 2011 for Beaumont.

The majority of riders are female (62%). Eleven percent (11%) of the riders are under 19 years of age. Eighty percent (80%) of the riders are of working age (19 to 60). Finally, nine percent (9%) of riders are over 60.

The ethnic distribution of riders shows that a majority are Hispanic or Black with 40% of the ridership being Caucasian.

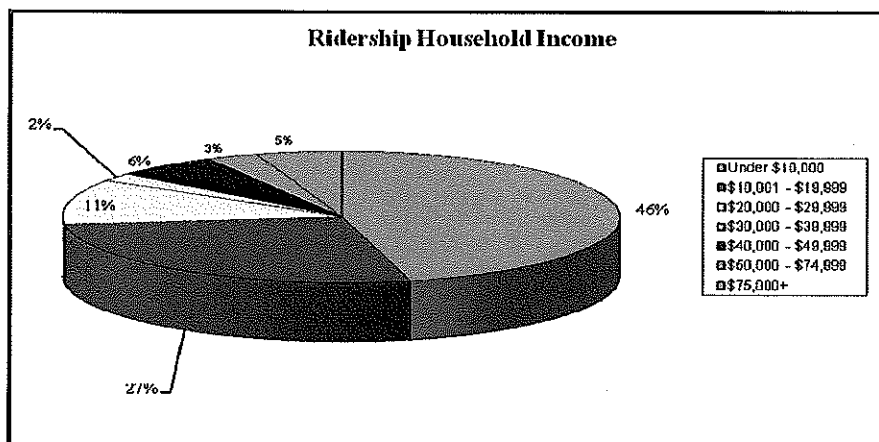
### Ridership Ethnicity



Thirty-nine percent (39%) of riders are employed either full or part time and sixteen percent (16%) are students. Retirees make up nine percent (9%) of the ridership while the unemployed are fifteen percent (15%) of total ridership.

Income levels of bus riders are low. About seventy-three percent (73%) make less than \$20,000 per year. Bus riders also are transit dependent and seventy-six percent (76%) of them do not have a car available for the trip they were taking. Approximately one-half of our riders use transit to get to their place of employment. It should be noted that of the riders that do own a vehicle, thirty-three percent (33%) of those ride the bus because driving is too expensive.

### Ridership Household Income



## **Ridership Employment Status**

Additional ridership statistics:

- Seventy-six percent (76%) of riders do not own a car.
- Ninety-eight percent (98%) of riders walk 4 or fewer blocks to the bus stop.
- Twenty percent (20%) of riders said they were using the bus to go to school.
- Eighty percent (80%) of the riders are of working age (19 to 60).
- Nine percent (9%) of riders are over 60.
- Thirty-seven percent (37%) ride at least five (5) days every week.

### **Fixed Route Transit Services**

The Pass Transit System operates eleven fixed routes, one express route and one commuterlink. Routes 2, 3, 4, 7, 9, 10, 11, 17 and CommuterLink 120 are operated by the Beaumont Transit System. Routes 1, 5, and 6 are operated by the Banning Transit System.

Routes 3 through 6 operate on one-hour headway. Routes 1 and 2 complement each other offering two-hour headway throughout the commercial areas of Beaumont, Banning, Cabazon, and the Morongo commercial development. Routes 7, 9, 10 and 17 offer limited services in the mornings and afternoons. Route 11 offers limited services in the mornings. Commuterlink 120 offers on demand limited service to the city of Calimesa and the San Bernardino Metrolink station three times per day.

Fixed route service hours are:

Monday – Friday	6:00 a.m. to 7:00 p.m.
Saturday and Sunday	8:00 a.m. to 5:00 p.m.

Limited service (8:00 a.m. to 5:00 p.m.) is provided on Martin Luther King, Jr.'s Birthday, Presidents' Day, Veterans' Day, and the day after Thanksgiving Day. No service is provided on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

### **Paratransit Services**

Dial-A-Ride provides service to seniors, persons with disabilities, and individuals certified for complementary paratransit service under the Americans with Disabilities Act (ADA).

Service hours for the dial-a-ride service are:

Elderly and Disabled without ADA certification  
Monday - Sunday 8:15 a.m. to 4:45 p.m.

Persons with ADA Complementary Paratransit Certification

Monday - Friday            6.00 a.m. to 7.00 p.m.  
Saturday and Sunday   8:00 a.m. to 5:00 p.m.

Through a cooperative memorandum of understanding, Pass Transit Dial-A-Ride operated by the Beaumont Transit system will provide its residents with service in Banning and within a  $\frac{3}{4}$  mile boundary of Route 2 in Cabazon. Pass Transit Dial-A-Ride operated by the Banning Transit System will provide its residents with service in the city limits of Beaumont (excluding Cherry Valley). Limited service (8:00 a.m. to 5:00 p.m.) is provided on Martin Luther King, Jr.'s Birthday, Presidents Day, Veteran's Day, and the day after Thanksgiving Day. No service is provided on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

### **Regional Express Bus Service**

Pass Transit began operating regional service on a limited basis in March 2012 and anticipates a growth in that service in the future. Additionally, passengers can use Day Passes to transfer between the Pass Transit System fixed routes and the RTA Line 31 to Hemet and Line 35 to Moreno Valley. There is a latent demand for better connections into eastern Riverside and San Bernardino counties for medical and social services as well as westward to the Palm Desert area for employment purposes. We look forward to working with SunLine as they implement a connector route from the desert communities.

### **Fare Structure**

The fare structure was adjusted in April 2012 for the Pass Transit System. The current fixed route fare is \$1.15 /one-way trip for general passengers. Student passengers pay \$1.00/one-way. The fare is \$.65/one-way trip for senior citizens and persons with disabilities. A zone fare of \$.25 exists for travel between Banning and Cabazon/Morongo Reservation service areas. (The route is twice the length of any other route in the system. The zone fare helps to recover operating costs.) Passengers under 46" in height pay \$.25. Ten-ride ticket books are offered for \$10.35 each; senior citizens and persons with disabilities can purchase the books at a reduced cost of \$5.85/10-ride book.

Day passes are sold for \$3.00 each; senior citizens and persons with disabilities can purchase the passes for \$1.80. Monthly passes are \$36.00; youth are \$25.00; senior citizens and persons with disabilities are \$21.50 each. In addition to those passes, a 10 tripper pass is offered for both dial-a-ride and youth passengers at a rate of \$18.00 and \$10.00 respectively.

## Pass Area Transit Fare Structure

<b>FIXED ROUTE FARES</b>   Have exact fare ready when bus arrives. Drivers cannot make change.					
Fare Categories	Base Fare	Day Pass	10-Tripper Punch Pass	10-Ticket Book	Monthly Pass
General	\$1.15	\$3.00	N/A	\$10.35	\$36.00
Youth (grades 1-12)	\$1.00	\$3.00	\$10.00	N/A	\$26.00
Senior (65+)**	\$ .65	\$1.80	N/A	\$5.85	\$21.50
Disabled**	\$ .65	\$1.80	N/A	\$5.85	\$21.50
Child (46" tall or under)	\$ .25	N/A	N/A	N/A	N/A
Zone/Deviations	\$ .25	N/A	N/A	N/A	N/A
<b>GO Pass   RIDE FREE</b>					
**If you plan to use a senior or disabled discounted fare, you must show proper ID each time you board the bus. You must also show proper ID to purchase discounted passes/tickets.					

<b>Dial-A-Ride FARES</b>   Have exact fare ready when bus arrives. Drivers cannot make change.		
Fare Categories	Base Fare	10-Ride Punch Card
One-Way	\$2.00	\$18.00
Companion	\$3.00	N/A
PCA (w/I.D.)**	FREE	FREE
No Show	\$2.00	N/A
Child	\$3.00	N/A

Dial-A-Ride is a transportation service for ADA, disabled and active adults over 65 years of age. Reservations are required 24-hours in advance and may be made by calling (951) 769-8532.

\*\*If you plan to use a PCA (Personal Care Attendant) free fare, you must show proper ID each time you board the bus.

<b>COMMUTER/EXPRESS FARES</b>   Have exact fare ready when bus arrives. Drivers cannot make change.		
Fare Categories	Commuter Fare (Route 120)	Express Fare (Route 8)
General	\$3.00	\$2.50
Youth (grades 1-12)	\$2.00	\$2.00
Senior (65+)**	\$2.00	\$2.00
Disabled**	\$2.00	\$2.00
Child	\$2.00	\$2.00

Commuter and Express routes are regional transportation services for all passengers. Reservations are required 24-hours in advance and may be made by calling (951) 769-8530.

\*\*If you plan to use a senior or disabled discounted fare, you must show proper ID each time you board the bus. You must also show proper ID to purchase discounted passes/tickets.

\*Express Route 8 to be eliminated



### **Fleet Characteristics**

Pass Transit operates thirteen fixed route vehicles (eight in revenue service and five in reserve). Nine of the vehicles are CNG-powered, two are diesel-powered, and two are gasoline powered. All are equipped with bicycle racks and ADA compliant with wheelchair lifts and tie-down stations.

The transit system also operates four Dial-A-Ride vehicles (three in revenue service and one in reserve). All are gasoline-powered. Three of the four vehicles are ADA compliant with wheelchair lifts and tie-down stations.

Between Banning and Beaumont, four new unleaded buses were purchased in the last year and are currently in service. Two CNG vehicles were purchased this year and are also in service. The CNG buses are fueled at fueling stations located at the Beaumont Unified School District's transportation yard and at the City of Banning corporate yard. The fueling stations are currently the only CNG stations in the Pass Area large enough to meet the transit system's demand.

The remaining two diesel-powered buses will be replaced with CNG within the next month. Purchase orders have been issued and staff is awaiting delivery.

### **Facilities**

Administrative services for Beaumont are provided by staff from various City of Beaumont departments with the majority of operations located at the Transit Services yard. Effective July 1, 2011, all customer service type functions, including bus passes, maps and schedules, and general transit information are performed at the following locations with extended service hours at two of the locations:

#### **Beaumont Civic Center**

Hours:	Monday-Thursday	8:00am to 5:00pm
	Friday	8:00am-Noon

#### **Beaumont Police Dept.**

Hours:	Monday-Friday	7:00am-7:00pm
	Saturday and Sunday	7:00am-Noon

#### **Community Recreation Center**

Hours:	Sunday-Saturday	6:00am-8:00pm
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Responsibility for overall administration of the transit system is provided by the City Resources Director. Maintenance of the vehicles is provided by Transit staff.

Banning Transit System functions as a department within the City and utilizes existing facilities. Transit Administrative staff is housed at the City's Community Center located

at 789 North San Gorgonio Avenue, where bus passes are sold, schedules are available and all ADA applications are processed. Dispatch and general telephone information is also provided at the transit office within the Community Center.

Banning Transit Office Hours:

Monday – Thursday 8:00am to 6:00pm

Friday 8:00am to 3:00pm

The maintenance, parking, fueling of the buses, and storage of bus stop amenities are performed at the City's Corporation Yard located at 176 East Lincoln Street. Maintenance of the vehicles is performed by the Public Works Department, Fleet Maintenance Division.

## **CHAPTER 2 - EXISTING SERVICE AND ROUTE PERFORMANCE**

Systemwide ridership for FY 2012 was 316,161. Estimated ridership for FY 2013 is projected at 328,428.

### **Fixed Route Service**

The Pass Transit System operates eight fixed routes, one express route, and one commuterlink. Routes 2, 3, 4, 7, 9, 10, 11, 17 and CommuterLink 120 are operated by the Beaumont Transit System. Routes 1, 5, and 6 are operated by the Banning Transit System.

Routes 3 through 6 operate on one-hour headway. Routes 1 and 2 complement each other offering two-hour headway throughout the commercial areas of Beaumont, Banning, Cabazon, and the Morongo commercial development. Routes 7, 9, and 10 offer limited services in the mornings and afternoons. Route 11 offers limited service in the mornings. Commuterlink 120 offers on-demand limited service three times per day to the city of Calimesa and the San Bernardino Metrolink station.

#### **Route 1- Banning to Cabazon**

This route operates on two-hour headway and is complemented by an overlap with Route 2 along 75% of the route. Route 1 is the only service to the remote Esperanza & Elm area of southeastern Cabazon. The route also provides service to the residential areas of Cabazon, James Venable Cabazon Community Center, Casino Morongo, Desert Hills Premium Outlets and Cabazon Outlets, the commercial areas along Ramsey Street and Highland Springs Avenue in Banning, and the commercial areas along 6<sup>th</sup> Street and Beaumont Avenue in Beaumont.

#### **Route 2- Beaumont to Cabazon**

This route operates on two-hour headway and is complemented by an overlap with Route 1 that reduces headway on 75% of the route to one hour. The route provides service to the residential area along the western portion of Beaumont, the commercial areas along 6<sup>th</sup> Street, Beaumont Avenue, Oak Valley Parkway and Highland Springs

Avenue in Beaumont, including the Rite-Aid, Wal-Mart Supercenter shopping center, the commercial areas along Ramsey Street in Banning, the Cabazon Community Center, Casino Morongo, and Desert Hills and Cabazon Outlet Malls.

#### **Route 3- Beaumont High to Wal-Mart**

This route operates on one-hour headway and serves the residential areas of Beaumont (north of I-10 freeway). It also serves the commercial areas of Beaumont including the Oak Valley and Wal-Mart Supercenter shopping centers and Beaumont High School. In FY 09 Beaumont improved Route 3 by making the routing more direct, eliminating fixed route service to most of Cherry Valley in favor of deviated service on demand and by adding routing through the Sundance development. A tripper bus has been added to accommodate for passenger increase during peak times.

#### **Route 4- Downtown Wal-Mart**

This route operates on one-hour headway and serves downtown Beaumont and the residential areas of the city of Beaumont including a small portion south of Interstate 10. In FY 10-11, Beaumont improved Route 4 by simplifying some routing while maintaining neighborhood coverage. It was determined that the best way to maintain the coverage is through a one-way loop which is not the most effective routing option for transit. Route 4 continues to serve the commercial and industrial areas of Beaumont. This route interlines with Route 11.

#### **Route 5- Northern Banning**

This route operates on a 75 minute headway and provides service to the residential areas of the City of Banning that lie north of the I-10 freeway, Nicolet Middle School, Hoffer Elementary School, Banning Public Library, Coombs Intermediate School, Hammering Elementary School and the commercial areas along Ramsey Street and Highland Springs Avenue.

#### **Route 6- Southern Banning**

The route operates on a 75 minute headway and provides service to the residential areas south of the I-10 freeway and the MSJC Pass Campus, a small residential section north of Ramsey Street at the east end of the City of Banning, the commercial areas along Ramsey Street and Highland Springs Avenue, Banning High School, Smith Correctional Facility, apartment complexes in the south, and the Banning Municipal Airport.

#### **Route 7- Tournament Hills & Fairway Canyon**

This route operates on half-hour headway between the hours of 6:30am and 8:00am and again between the hours of 3:00pm and 5:30pm. The route services the Rite-Aid shopping center, the Oak Valley community, the westerly portion of Interstate 10 more commonly referred to as the Tournament Hills area, Cherry Valley, the high school and commercial areas. A second bus in service was added to meet the growing demand of passengers on this route, allowing buses stopping at certain time points approximately every 15 minutes.

**Route 8- Express Route**

This route is to be eliminated for FY 2012/13.

**Route 9- Seneca Springs to Cherry Valley**

This route operates on half-hour headway between the hours of 6:30am and 8:00am and again between the hours of 3:00pm and 4:00pm. The route services the southerly portion of Interstate 10, Loma Linda Medical Center, the Seneca Springs community, downtown, the middle schools and the high school. A tripper bus service has been added to meet the growing demand of passengers on this route.

**Route 10- Beaumont High to Downtown Beaumont**

This route interlines with Route 3 and operates on a one-hour headway during the hours of 11:00am – 12:00pm and then again between the hours of 2:00pm and 3:00pm. The route services the high school, two middle schools, Sundance, the Civic Center, Three Rings Ranch, community recreation centers and downtown. The route provides a direct link to child care facilities in Beaumont.

**Route 11- Banning to Pennsylvania**

This route interlines with Route 4 and operates on three-quarter hour headway between 6:30am and 7:20am. This route services the westerly portion of Banning more commonly referred to as "Midway", downtown Beaumont, Oak Valley and Beaumont High School.

**Route 17- Tournament Hills to Fairway Canyon**

This route operates on half-hour headway between the hours of 6:30am and 8:00am and again between the hours of 3:00pm and 3:45pm. The route services areas west of the I-10 in an area known as Tournament Hills, Brookside Elementary, the high school and jr. high, Rite-Aid and Noble Creek Park. A tripper bus service has been added to meet the growing demand of passengers on this route.

**Route 120- Commuter Link**

This route operates on one-hour headway as a modified on-demand commuterlink to shuttle passengers directly to the San Bernardino Metrolink station from Wal-Mart in Beaumont. This route was introduced in March of 2012.

**Dial-A-Ride Service**

Dial-A-Ride operates on a reservation system. Passengers are asked to call at least 24-hours in advance to schedule a pick-up.

**Key Performance Indicators**

The Riverside County Transportation Commission has adopted a Productivity Improvement Plan (PIP) for the transit and commuter rail operators of Riverside County. The PIP sets forth efficiency and effectiveness standards that the transit operators are to meet. Progress towards these standards is reported quarterly to the Commission.

Below is a table of the operating performance indicators adopted in the PIP and this plan's projections for FY 2011/12.

### **Beaumont Municipal Transit Agency**

<b>Beaumont Municipal Transit Agency</b>	<b>FY 2011 Audited</b>	<b>FY 2012 Projected</b>	<b>%Increase/ Decrease</b>	<b>FY 2013 Planned</b>
<b><i>Performance Statistics</i></b>				
Unlinked Passenger Trips	169,665	179,905	6%	184,256
Operating Cost Per Revenue Hours	\$77.78	\$80.03	3%	\$87.42
Farebox Recovery Ratio	17.45%	16.47%	-6%	12.64%
Subsidy per Passenger	\$6.00	\$4.39	-27%	\$6.72
Subsidy per Passenger Mile	\$2.94	\$2.18	-26%	\$3.37
Subsidy per Revenue Hour	\$64.21	\$55.00	-14%	\$76.36
Subsidy per Revenue Mile	\$4.45	\$3.26	-27%	\$5.31
Passengers per Revenue Hour	10.7	9.10	-15%	11.4
Passengers per Revenue Mile	.74	.74	0%	.79

### **Banning Transit System**

<b>Banning Transit System</b>	<b>FY 2011 Audited</b>	<b>FY 2012 Estimated</b>	<b>%Increase/ Decrease</b>	<b>FY 2013 Projected</b>
<b><i>Performance Statistics</i></b>				
Unlinked Passenger Trips	128,244	136,256	6%	144,091
Operating Cost Per Revenue Hours	\$92.64	\$85.24	-8%	\$85.40
Farebox Recovery Ratio	9.90%	10.88%	10%	10.59%
Subsidy per Passenger	\$8.71	\$8.25	-5%	\$8.13
Subsidy per Passenger Mile	\$3.41	\$2.89	-15%	\$2.63
Subsidy per Revenue Hour	\$83.47	\$75.86	-9%	\$76.35
Subsidy per Revenue Mile	\$5.18	\$3.19	-38%	\$4.89
Passengers per Revenue Hour	9.6	10.3	7%	9.4
Passengers per Revenue Mile	.6	.43	-28%	.60

### **Productivity Improvement Efforts**

Pass Area transit has made a significant effort to improve productivity in the last two fiscal years and will continue to do so in the future, as evident by our passenger increase. Such notable improvements include fiscal responsibility, increasing passenger fares to meet increased operational costs for transit services, more efficient

data compilation, and combining staffing assignments to reduce personnel overhead. Beaumont and Banning have both been working to increase student ridership for elementary through college-level students.

Effective July 1, 2011, the Beaumont Pass Transit began offering customer service type functions at three locations including: Beaumont Civic Center, Beaumont Police Department, and the Community Recreation Center. With the addition of two locations to serve the needs of our customers and the added benefit of operating hours early in the morning, later in the evening and over the weekend, we anticipate more effective communication with our passengers and are hopeful that we will continue to grow and expand our system.

The Community Services Director of Banning regularly visits the Banning Senior Center and Nutrition Site providing information on the Fixed Route and Dial-A-Ride and answering any questions or concerns that current and potential passengers may have. In order to meet the PIP staff will review all routes to make sure that service is warranted and will eliminate any unproductive areas. Analyzing all routes and monitoring them for unproductive service areas continues to be an ongoing activity.

Pass Area Transit is currently putting out to bid a Request for Proposals for a Comprehensive Operations Analysis to increase productivity and get a more extensive demographical analysis so that routes can be adjusted to meet the population's needs.

#### **Major Trip Generators and Projected Growth**

Major trip destinations include the high school and middle schools, MSJC Pass Campus, commercial areas along Beaumont Avenue, 6th Street, 2nd Street Marketplace, Oak Valley shopping center, Ramsey Street and Highland Springs Avenue; the Super Wal-Mart transfer point; area elementary, intermediate and high schools; Desert Hills Outlet Malls, Cabazon Outlet Mall, and Casino Morongo; Beaver Medical and the Highland Springs medical offices adjacent to the San Geronio Memorial Hospital and thrift store; Riverside County Department of Public Social Services; Banning Mental Health and public health clinic; and H.E.L.P.

In August 2009, the Beaumont Unified School District terminated all transportation services to both middle schools and the high school forcing students to find alternate transportation. All of the routes that specifically accommodate student passengers are at capacity. A tripper bus was added to Routes 3, 9, and 17 to accommodate the overflow of passengers that travel on that route. A second bus was recently added to Route 7 to offer more time points and faster service for those passengers.

Beaumont Transit staff is currently working closely with Beaumont Unified School staff in anticipation of an increase in elementary-aged passengers, should the school district terminate busing all home to school students in August 2012. Should that occur, staff anticipates an increase in service by approximately four routes and over 250 passenger trips per day.

Providing service to major employers, including Stater Brothers, Duraplastics, Wal-Mart Supercenter, Lowe's Distribution Plant, and Home Depot, was anticipated to increase ridership. Ridership has increased to the Wal-Mart Supercenter. Future warehouse distribution centers are anticipated in the next two years as well as the Mid-County Justice Center, staff will monitor these developments closely and plan route changes in accordance with work hours. Ridership to Home Depot and the Oak Valley shopping center has not increased as anticipated. The service to these centers and its utilization will be part of an ongoing system evaluation and monitoring.

Finally, expanded outreach efforts to elementary-aged passengers, senior citizen organizations, schools and major employers are included in the plan for FY 2013.

#### **Equipment, Passenger Amenities and Facility Needs**

The system's fixed route buses are equipped with passenger-operated bicycle racks. All revenue service vehicles are equipped with wheelchair lifts and tie-down stations. Eight vehicles are equipped with seatbelts.

Bus stops in commercial areas are equipped with benches. Kiosks have been installed at all bus stop signs. Waste containers are available at many of the commercial bus stops. Flag down stops are utilized in a few of the residential areas of Beaumont.

Currently, Beaumont Transit has bus shelters located at five of the most utilized stops. Six more bus shelters are to be purchased and installed in May 2012 with solar lighting. Upgrades to the remaining shelters including new glass, new mesh steel panels and new paint were performed in the past year. In April 2012, Banning Transit replaced 13 current shelters with new shelters that have the added amenity of solar lighting. In addition, a new shelter was placed at the MSJC Pass Campus. Bus benches have been replaced throughout town and new schedule kiosks are being installed as well. All bus stop amenities and a new shop truck were purchased with STA capital funds during FY 2011/12. Also purchased during FY 2011/12 were digital security cameras for all buses in the fleet and the necessary viewing equipment. This project was funded through Prop 1B Security Funds.

This past month, staff entered into an agreement with a GIS consultant to design a system-wide map to include all routes in the Pass area. We anticipate completion including printing and distribution by June 2012.

At the end of 2010, staff completed training and implementation on Google Transit, with the assistance of RCTC staff. All bus stops and times are accessible via the web on Google Transit.

## **CHAPTER 3 - PLANNED SERVICE CHANGES AND IMPLEMENTATION**

### **Recent Service Changes**

#### *New Service Routes*

In FY 2012, a new Commuterlink route (Route 120) was created to service passengers traveling to and from the San Bernardino Metrolink station. Routes 3, 9 and 17 added tripper buses during peak times. An additional bus was added to Route 7 which has increased time points for passengers. Route 25, a shopper shuttle with a 30-minute headway servicing local businesses during the holiday season was in service for 30 days and was well-received by passengers. Staff anticipates making this a permanent route in July 2012. Route 121, a modified on-demand shuttle to and from the Loma Linda Veteran's Hospital is also being considered for FY 2013.

Route 6 was expanded in 2011 to accommodate the need for service to the MSJC Pass Campus. Survey and planning studies are scheduled for fall of 2012 to assess the need for additional hours of operation for this route based on the projected growth of students traveling to and from the campus.

Pass Area Transit also now offers Sunday service. Staff continually reviews existing routes for productivity and for needed improvement to service. Future changes to routes will include adding a bus to existing routes during peak times to accommodate the growing number of passengers in certain identified areas.

### **Marketing Plans and Promotion**

Efforts have been made to market the Pass Transit System over the past year and will continue in the coming year. These efforts include purchasing advertising on a map of the San Gorgonio Pass Area, distribution of route maps through the utility bills, delivering route maps to the library, chamber of commerce, local businesses and shelters. Route maps have also been placed on all of the buses in map holders.

This past month, staff entered into an agreement with a GIS consultant to design a system wide map to include all routes in the Pass area. We anticipate completion including printing and distribution by June 2012.

Kiosks have been installed at all bus stop signs with current maps and time points included.

A sub-committee of the Transportation Now Chapter was created in 2009 to address marketing efforts to students in the Pass Area. From that sub-committee, a co-sponsored event between Banning, Beaumont, RTA and the Mt. San Jacinto Community College took place in August to market college students and encourage them to ride mass transit to and from the community college. With that, Pass Transit



followed RTA's lead and allowed all GoPass holders to ride Pass Transit free. Staff will continue to support this effort in the coming year.

During school orientation, staff met with students and parents to educate them on their transit options in the Pass Area. We have been invited back for the coming school year and look forward to the upcoming events.

In Beaumont, a scholarship program was implemented in January 2010 after we were contacted by a local family and the school district seeking assistance in transporting two students from the Banning Midway area to Beaumont High School. Staff met with the family and agreed upon a series of transit related assignments to be performed and completed in exchange for monthly bus passes. From that, a committee was formed to set criteria, receive applications, and monitor the progress of the recipients. Council formally adopted the program for the FY 2012 school year.

Finally, providing Banning Pass Transit and Dial-A-Ride information on the local television channel, staff appearances at Banning Unified School District Back to School Nights and Open Houses, flyers and posters placed throughout the city and outside areas (Beaumont and Cabazon) serviced by the transit system and newspaper ads can all be utilized to educate the public about the Banning Pass Transit and Dial-A-Ride services available.

The following marketing efforts will be undertaken to promote ridership growth.

1. Continue outreach programs to schools and at community events.
2. Attend senior community meetings to provide information.
3. Participate in the Mt. San Jacinto Jr. College GO-PASS Program to encourage ridership of college students.
4. Enclose flyers with transit information in city utility bills.

Both cities' websites at [www.ci.banning.ca.us](http://www.ci.banning.ca.us) and [www.ci.beaumont.ca.us](http://www.ci.beaumont.ca.us) provide basic Pass Transit route and schedule information. Additionally, a link to Google Transit is on the web page. Transit staff is currently working to make information about routes and services more accessible. Customers can submit comments, complaints, concerns and suggestions through the city website.

## **CHAPTER 4 – FINANCIAL AND CAPITAL PLANS**

### **Operating and Capital Budget**

Although the State reduction in funding has adversely impacted our operating budget, staff feels confident that all of the following will greatly improve our operations and we will be able to meet the budget limitations set by the State:

- Continue to concentrate on marketing the youth in the Pass Area to increase ridership
- Re-organize routes to better accommodate ridership and reduce overhead costs
- Offer more information on system routes with extended customer service hours

The majority of the capital improvement projects were completed in the last year with the purchase of six new buses. We will continue to aggressively complete the final projects in the next year.

### **Funding Plans to Support Proposed Operating and Capital Program**

Capital projects are funded through STA funds and Proposition 1B grants for both Banning and Beaumont.

### **Regulatory and Compliance Requirements**

#### *The American with Disabilities Act of 1990*

The Dial-A-Ride services provide ADA complementary paratransit service for the fixed route services. The system uses a self-certification process with professional verification. The Pass Area Transit has allowed RTA to certify its ADA passengers and work under the umbrella of RTA's ADA policy as a provider of ADA paratransit.

#### *Title VI*

The Pass Transit System does not utilize federal funds for operating expenses. As such, Title VI requirements do not currently apply to the transit system.

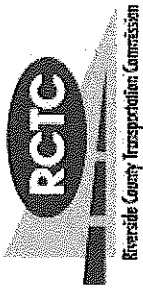
#### *Alternatively Fueled Vehicles (RCTC Policy)*

The Pass Transit System operates CNG-powered buses on multiple fixed-routes. The balance of the system's revenue service vehicles is diesel and gasoline-powered. Future vehicle purchases will be in compliance with the RCTC and SCAQMD policies regarding alternative fuel transit vehicles. CNG fueling stations are available in both cities which will assist with expanded fueling needs and fast fueling capability.

#### *STA Compliance*

Both Banning and Beaumont do not utilize State Transit Assistance (STA) funding for operating expenses. As such, compliance with the Public Utilities Commission requirement is not applicable.

# BANNING TABLES



**Table 1 - Fleet Inventory**  
**FY 2012/13 Short Range Transit Plan**  
 City of Banning

**Bus (Motorbus) / Directly Operated**

Year Built	Mfg. Code	Model Code	Seating Capacity	Lift and Ramp Equipped	Vehicle Length	Fuel Type Code	# of Active Vehicles FY 2011/12	# of Contingency Vehicles FY 2011/12	Life to Date Vehicle Miles Prior Year End FY 2010/11	Life to Date Vehicle Miles through March FY 2011/12	Average Lifetime Miles Per Active Vehicle As Of Year-To-Date (e.g., March) FY 2011/12
2009	CMD	Malibu	5	1		HG	1	0	4,338	7,009	7,009
1998	EDN	Transmark	33	2	35	CN	2	0	295,955	283,459	141,730
2001	EDN	Transmark	33	1	35	CN	1	0	414,658	436,467	436,467
2004	EDN	Transmark	33	2	35	CN	2	0	594,806	623,859	311,930
2010	EDN	XHF	31	2	34	CN	2	0	44,349	112,023	56,012
2002	FRD	Ranger	2	0	12	GA	1	0	50,824	57,843	57,843
2003	FRD	Ranger	2	0	12	GA	1	0	42,743	45,831	45,831
2010	FRD	Ranger	2	0		GA	1	0	6,704	13,285	13,285
<b>Totals:</b>			141	8			11	0	1,454,377	1,579,776	143,616



**Table 1 - Fleet Inventory**  
**FY 2012/13 Short Range Transit Plan**  
**City of Banning**

**Demand Response / Directly Operated**

Year Built	Mfg. Code	Model Code	Seating Capacity	Lift and Ramp Equipped	Vehicle Length	Fuel Type Code	# of Active Vehicles FY 2011/12	# of Contingency Vehicles FY 2011/12	Life to Date Vehicle Miles Prior Year End FY 2010/11	Life to Date Vehicle Miles through March FY 2011/12	Average Lifetime Miles Per Active Vehicle As Of Year-To-Date (e.g., March) FY 2011/12
2010	EBC	Aerotech	16	1	25	GA	1	0	18,830	24,640	24,640
2010	EBC	EDN	16	1		GA	1	0	20,377	30,579	30,579
2001	EDN	Aerotech	12	1	25	GA	1	0	224,474	232,958	232,958
2003	EDN	Aerotech	12	1	25	GA	1	0	209,093	214,977	214,977
2008	ZZZ	Ford	14	1	26	GA	1	0	50,681	55,603	55,603
<b>Totals:</b>			70	5			5	0	523,455	558,757	111,751

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**Table 2 -- City of Banning -- SRTP Service Summary**  
**FY 2012/13 Short Range Transit Plan**  
**All Routes**

Fleet Characteristics		FY 2009/10 Audited	FY 2010/11 Audited	FY 2011/12 Plan	FY 2011/12 3rd Qtr Actual	FY 2012/13 Plan
Peak-Hour Fleet				5		5
Financial Data						
Total Operating Expenses		\$1,220,116	\$1,240,257	\$1,260,587	\$843,489	\$1,310,135
Total Passenger Fare Revenue		\$133,374	\$122,797	\$133,643	\$91,770	\$138,780
Net Operating Expenses (Subsidies)		\$1,086,742	\$1,117,460	\$1,126,944	\$751,719	\$1,171,355
Operating Characteristics						
Unlinked Passenger Trips		127,932	128,244	131,834	102,192	144,091
Passenger Miles		342,161	327,258	340,578	261,056	445,041
Total Actual Vehicle Revenue Hours (a)		14,468.1	13,387.3	13,574.0	9,896.9	15,341.0
Total Actual Vehicle Revenue Miles (b)		233,761.2	215,531.2	219,100.0	234,971.1	239,460.0
Total Actual Vehicle Miles		244,325.6	224,148.1	228,265.0	239,332.5	268,924.0
Performance Characteristics						
Operating Cost per Revenue Hour		\$84.33	\$92.64	\$92.87	\$85.23	\$85.40
Farebox Recovery Ratio		10.93%	9.90%	10.60%	10.88%	10.59%
Subsidy per Passenger		\$8.49	\$8.71	\$8.55	\$7.36	\$8.13
Subsidy per Passenger Mile		\$3.18	\$3.41	\$3.31	\$2.88	\$2.63
Subsidy per Revenue Hour (a)		\$75.11	\$83.47	\$83.02	\$75.96	\$76.35
Subsidy per Revenue Mile (b)		\$4.65	\$5.18	\$5.14	\$3.20	\$4.89
Passenger per Revenue Hour (a)		8.8	9.6	9.7	10.3	9.4
Passenger per Revenue Mile (b)		0.55	0.60	0.60	0.43	0.60

(a) Train Hours for Rail Modes. (b) Car Miles for Rail Modes.

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**Table 2 -- Banning-BUS -- SRTP Service Summary**  
**FY 2012/13 Short Range Transit Plan**  
**All Routes**

	FY 2009/10 Audited	FY 2010/11 Audited	FY 2011/12 Plan	FY 2011/12 3rd Qtr Actual	FY 2012/13 Plan
<b>Fleet Characteristics</b>					
Peak-Hour Fleet			3		3
<b>Financial Data</b>					
Total Operating Expenses	\$1,106,023	\$1,111,207	\$1,111,327	\$719,104	\$1,156,076
Total Passenger Fare Revenue	\$124,985	\$114,215	\$122,843	\$82,742	\$127,180
Net Operating Expenses (Subsidies)	\$981,038	\$996,992	\$988,484	\$636,363	\$1,028,896
<b>Operating Characteristics</b>					
Unlinked Passenger Trips	118,394	120,018	121,989	95,389	134,005
Passenger Miles	307,824	297,645	282,095	236,565	405,091
Total Actual Vehicle Revenue Hours (a)	12,774.0	11,934.0	11,295.0	8,906.0	12,766.0
Total Actual Vehicle Revenue Miles (b)	199,700.2	186,568.2	175,595.0	215,061.1	196,746.0
Total Actual Vehicle Miles	205,519.6	191,831.1	181,460.0	217,848.5	202,486.0
<b>Performance Characteristics</b>					
Operating Cost per Revenue Hour	\$86.58	\$93.11	\$98.39	\$80.74	\$90.56
Farebox Recovery Ratio	11.30%	10.28%	11.05%	11.51%	11.00%
Subsidy per Passenger	\$8.29	\$8.31	\$8.10	\$6.67	\$7.68
Subsidy per Passenger Mile	\$3.19	\$3.35	\$3.50	\$2.69	\$2.54
Subsidy per Revenue Hour (a)	\$76.80	\$83.54	\$87.52	\$71.45	\$80.60
Subsidy per Revenue Mile (b)	\$4.91	\$5.34	\$5.63	\$2.96	\$5.23
Passenger per Revenue Hour (a)	9.3	10.1	10.8	10.7	10.5
Passenger per Revenue Mile (b)	0.59	0.64	0.69	0.44	0.68

(a) Train Hours for Rail Modes. (b) Car Miles for Rail Modes.

**Table 2 -- Banning-DAR -- SRTP Service Summary**  
**FY 2012/13 Short Range Transit Plan**  
**All Routes**

	FY 2009/10 Audited	FY 2010/11 Audited	FY 2011/12 Plan	FY 2011/12 3rd Qtr Actual	FY 2012/13 Plan
<b>Fleet Characteristics</b>					
Peak-Hour Fleet			2		2
<b>Financial Data</b>					
Total Operating Expenses	\$114,093	\$129,050	\$149,260	\$124,385	\$154,059
Total Passenger Fare Revenue	\$8,390	\$8,582	\$10,800	\$9,029	\$11,600
Net Operating Expenses (Subsidies)	\$105,704	\$120,468	\$138,460	\$115,356	\$142,459
<b>Operating Characteristics</b>					
Unlinked Passenger Trips	9,538	8,226	9,845	6,803	10,086
Passenger Miles	34,337	29,614	58,483	24,491	39,950
Total Actual Vehicle Revenue Hours (a)	1,694.1	1,453.3	2,279.0	990.9	2,575.0
Total Actual Vehicle Revenue Miles (b)	34,061.0	28,963.0	43,505.0	19,910.0	42,714.0
Total Actual Vehicle Miles	38,806.0	32,317.0	46,805.0	21,484.0	66,438.0
<b>Performance Characteristics</b>					
Operating Cost per Revenue Hour	\$67.35	\$88.80	\$55.49	\$125.53	\$59.83
Farebox Recovery Ratio	7.35%	6.65%	7.23%	7.26%	7.52%
Subsidy per Passenger	\$11.08	\$14.64	\$14.06	\$16.96	\$14.12
Subsidy per Passenger Mile	\$3.08	\$4.07	\$2.37	\$4.71	\$3.57
Subsidy per Revenue Hour (a)	\$62.40	\$82.89	\$60.75	\$116.42	\$55.32
Subsidy per Revenue Mile (b)	\$3.10	\$4.16	\$3.18	\$5.79	\$3.34
Passenger per Revenue Hour (a)	5.6	5.7	4.3	6.9	3.9
Passenger per Revenue Mile (b)	0.28	0.28	0.23	0.34	0.24

(a) Train Hours for Rail Modes. (b) Car Miles for Rail Modes.

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**Table 3 - SRTP Route Statistics**  
**City of Banning -- 1**  
**FY 2012/13**  
**All Routes**

Data Elements											
Route #	Day Type	Peak Vehicles	Passengers	Passenger Miles	Revenue Hours	Total Hours	Revenue Miles	Total Miles	Operating Cost	Passenger Revenue	Net Subsidy
BAN-1	Total	1	46,251	146,547	4,195.0	4,207.0	71,735.0	73,648.0	\$425,467	\$53,359	\$372,108
BAN-5	Total	1	51,048	123,199	4,376.0	4,195.0	59,569.0	59,930.0	\$391,472	\$39,560	\$351,912
BAN-6	Total	1	36,706	135,345	4,195.0	4,311.0	65,442.0	68,908.0	\$339,137	\$34,261	\$304,876
BAN-DAR	Total	2	10,086	39,950	2,575.0	3,810.0	42,714.0	66,438.0	\$154,059	\$11,600	\$142,459
Service Provider Totals		5	144,091	445,041	15,341.0	16,523.0	239,460.0	268,924.0	\$1,310,135	\$138,780	\$1,171,355

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**Table 3 - SRTP Route Statistics**  
 City of Banning -- 1  
 FY 2012/13  
 All Routes

Route #	Day Type	Performance Indicators									
		Operating Cost Per Revenue Hour	Operating Cost Per Revenue Mile	Cost Per Passenger	Farebox Recovery Ratio	Subsidy Per Passenger	Subsidy Per Passenger Mile	Subsidy Per Revenue Hour	Subsidy Per Revenue Mile	Passengers Per Hour	Passengers Per Mile
BAN-1	Total	\$101.42	\$5.93	\$9.20	12.54%	\$8.05	\$2.54	\$88.70	\$5.19	11.0	0.64
BAN-5	Total	\$89.46	\$6.57	\$7.67	10.10%	\$6.89	\$2.86	\$80.42	\$5.91	11.7	0.86
BAN-6	Total	\$80.84	\$5.18	\$9.24	10.10%	\$8.31	\$2.25	\$72.68	\$4.66	8.7	0.56
BAN-DAR	Total	\$59.83	\$3.61	\$15.27	7.52%	\$14.12	\$3.57	\$55.32	\$3.34	3.9	0.24
Service Provider Totals		\$85.40	\$5.47	\$9.09	10.59%	\$8.13	\$2.63	\$76.35	\$4.89	9.4	0.60

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**TABLE 3A: INDIVIDUAL ROUTE DESCRIPTION**

**Route 1 – Beaumont/Banning/Cabazon**

Pass Transit Route 1 provides service predominately along Ramsey Street & 6<sup>th</sup> Street between Beaumont City Hall, Banning and Cabazon, while serving the Casino Morongo, Cabazon neighborhoods and Cabazon shopping areas. This route operates on a two-hour and nine minute headway and is complemented by an overlap with Route 2 (operated by Beaumont Transit System) along 75% of the route. Route 1 provides service to the remote Esperanza and Elm area of Cabazon. The route also provides service to the residential areas of Cabazon, James Venable Community Center, Casino Morongo, Desert Hills Premium Outlets and Cabazon outlets, and the commercial areas along 6<sup>th</sup> Street and Beaumont Avenue in Beaumont.

This route provides riders access to many civic, educational and county sponsored public social service offices within the City of Banning and the unincorporated community of Cabazon. Destinations on Route 1 include: K-Mart, Albertsons, Stater's, Food-4-Less, Wal-Mart Supercenter, Beaumont City Hall, Greyhound Crucero Agency, Amtrak California Thruway bus stop, Banning City Hall, The Gas Company, San Gorgonio Memorial Hospital, Fox Cinemas, Banning Police Department, Desert Hills Premium Outlets, Cabazon Outlets, Casino Morongo and James Venable Community Center.

**Route 5 – Northern Banning**

This route operates on a 78 minute headway and provides service to the residential areas of the City of Banning that lie north of the I-10 Freeway, the Riverside County Courthouse, the Banning Municipal Library, the Coombs Intermediate School, and the commercial areas along Ramsey Street and Highland Springs Avenue.

This neighborhood feeder route provides connections to many civic, educational and county sponsored public social service offices, Banning City Hall, Banning Police Department, Fox Cinemas, K-Mart, Albertsons, Stater's, Food-4-Less, Rite Aid Pharmacy, Walgreens Pharmacy, San Gorgonio Memorial Hospital, Banning Chamber of Commerce, Riverside County Superior Court, Banning Public Library, Banning Community Center, Banning Senior Center, Repplier Park Aquatics Center, U.S. Post Office, and various other shopping and school locations within the community.

**Route 6 – Southern Banning**

This route operates on a 82 minute headway and provides service to the residential areas south of the I-10 Freeway, a small residential section north of Ramsey Street at the east end of the City of Banning, the commercial areas along Ramsey Street and Highland Springs Avenue, Banning High School, apartment complexes, the Riverside County Smith Correctional Facility, and the Mt. San Jacinto College.

This neighborhood feeder route provides connections to many civic, educational and county sponsored public social service offices, Banning City Hall, Banning Police Department, Fox Cinemas, Stater's, Food-4-Less, K-Mart, Albertsons, Rite Aid Pharmacy, Walgreens Pharmacy, San Geronio Memorial Hospital, Banning High School, the Riverside County Smith Correctional Facility, The Banning Municipal Airport, U.S. Post Office, and various other shopping and school locations within the community.

### **Route 5/6 Combo**

This route operates on a 102 minute headway and provides service to the residential areas south of the I-10 Freeway, a small residential section north of Ramsey Street at the east end of the City of Banning, the commercial areas along Ramsey Street and Highland Springs Avenue, Banning High School, apartment complexes, the Riverside County Smith Correctional Facility, and the Mt. San Jacinto College. It also provides service to the residential areas that lie north of the I-10 Freeway, the Riverside County Courthouse, the Banning Municipal Library and the commercial areas along Ramsey Street and Highland Springs Avenue.

This neighborhood feeder route provides connections to many civic, educational and county sponsored public social service offices, Banning City Hall, Banning Police Department, Fox Cinemas, K-Mart, Albertsons, Stater's, Food-4-Less, Rite Aid Pharmacy, Walgreens Pharmacy, San Geronio Memorial Hospital, Banning Chamber of Commerce, Riverside County Superior Court, Banning Public Library, Banning Community Center, Banning Senior Center, Repplier Park Aquatics Center, U.S. Post Office, and various other shopping and school locations within the community

### **Pass Transit Dial-A-Ride**

Pass Transit Dial-A-Ride is provided within the entire city limits of Banning and Beaumont and within a ¼ mile boundary of Routes 1 and 2 services in Cabazon. The City of Banning provides the ADA certification for Pass Transit Dial-A-ride services operated by the cities of Banning and Beaumont.

Seniors (age 60 years and older), persons with disabilities, and ADA eligible passengers are eligible for dial-a-ride throughout the entire service area. Service hours vary for non-ADA eligible passengers. These categories of passengers also are required to fill out a certification application to determine eligibility of service. Once certified, a card is issued to the applicant.

General public passengers (ages 5 – 59 years) are not eligible for dial-a-ride service. The primary uses of Pass Transit Dial-A-Ride are for transportation to medical appointments, workshop programs for persons with disabilities, shopping areas, employment, and connections with Riverside Transit Agency (RTA) and Pass Transit Fixed Routes.

Effective July 1, 2012 the Banning Pass Transit Combo Route 5/6 route will no longer be provided as we will return to offering three (3) routes, Route 1 Cabazon, Route 5 Northern and Route 6 Southern on Saturday's and Sunday's from 8:00 a.m. to 5:00 p.m..

City of Banning  
FY 2012/13  
Summary of Funds Requested  
Short Range Transit Plan

**Table 4 - Summary of Funds Requested for FY 2012/13**

Project Description	Capital Project Number (1)	Total Amount of Funds	LTF	STA	Prop 1B (PTVISEA)	Prop 1B Security	Measure A	Fare Box	Other (2)
FY 2012/13 Operating Assistance		\$1,310,135	\$1,170,105					\$138,780	\$1,250
									10.68821%
<b>Subtotal: Operating</b>		\$1,310,135	\$1,170,105	\$0	\$0	\$0	\$0	\$138,780	\$1,250
FY 12-01									
<b>Subtotal: Capital</b>			\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total: Operating &amp; Capital</b>		\$1,310,135	\$1,170,105	\$0	\$0	\$0	\$0	\$138,780	\$1,250

Note: Other (2) is from Interest Income

City of Banning  
FY 2013/14  
Summary of Funds Requested  
Short Range Transit Plan

**Table 5.1 - Summary of Funds Requested for FY 2013/14**

Project Description	Capital Project Number (1)	Total Amount of Funds	LTF	STA	Prop 1B (PTMISEA)	Prop 1B Security	Measure A	Fare Box	Other (2)
FY 2013/14 Operating Expenses		\$1,348,145	\$1,205,208					\$141,687	\$1,250
<b>Subtotal: Operating</b>		\$1,348,145	\$1,205,208	\$0	\$0	\$0	\$0	\$141,687	\$1,250
No Requests									
<b>Subtotal: Capital</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total: Operating &amp; Capital</b>		\$1,348,145	\$1,205,208	\$0	\$0	\$0	\$0	\$141,687	\$1,250

Note: Other (2) is from Interest Income

City of Banning  
FY 2014/15  
Summary of Funds Requested  
Short Range Transit Plan

**Table 5.2 - Summary of Funds Requested for FY 2014/15**

Project Description	Capital Project Number (1)	Total Amount of Funds	LTF	STA	Prop 1B (PTMISEA)	Prop 1B Security	Measure A	Fare Box	Other (2)
FY 14/15 Operating Expenses		\$1,383,942	\$1,235,338					\$147,354	\$1,250
<b>Subtotal: Operating</b>		\$1,383,942	\$1,235,338	\$0	\$0	\$0	\$0	\$147,354	\$1,250
No Requests									
<b>Subtotal: Capital</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total: Operating &amp; Capital</b>		\$1,383,942	\$1,235,338	\$0	\$0	\$0	\$0	\$147,354	\$1,250

Note: Other (2) is from Interest Income

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**TABLE 6 – AUDIT**

<b>Audit Recommendations</b> <b>(Covering FY 2006/07 – FY 2008/09)</b>	<b>Action(s) Taken And Results</b>
<p>1. Banning Transit should implement the remaining three prior audit recommendations:</p> <ul style="list-style-type: none"> <li>♦ Provide Passenger Mile data in TransTrack</li> <li>♦ Continued Recruitment of Drivers</li> <li>♦ Provide incentives for drivers to maintain longevity</li> </ul>	<p>Passenger Mile data in TransTrack was implemented in 2006</p> <p>The hiring process for drivers has been greatly improved through developing better communication with Human Resources. Employee Recognition program is in place honoring employees at each 10 year mark. We also provide an excellent retirement package and recognize seniority for scheduling.</p>
<p>2. Develop and enforce employee policies and rules specific to providing consistent transit service.</p>	<p>Policies and procedures have been updated as of October 2011. Safety and training meetings are held a minimum of eight times per year, at these meeting policies and rules and rules are reiterated.</p> <p>Drivers are required to strictly adhere to all guidelines and are individually monitored on a monthly basis by the Lead Driver Trainer.</p>
<p>3. Conduct daily reconciliation of farebox revenues with passenger counts.</p>	<p>A procedure has been developed and implemented that allows for daily reconciliation of farebox revenues with passenger counts.</p>



**Table 7 -- Service Provider Performance Targets Report**  
 FY 2011/12 Short Range Transit Plan Review  
 City of Banning

Data Elements	FY 2011/12 Plan	FY 2011/12 Target	FY 2011/12 Year to Date Through 3rd Quarter	Year to Date Performance Scorecard
Unlinked Passenger Trips	131,834			
Passenger Miles	340,578			
Total Actual Vehicle Revenue Hours	13,574.0			
Total Actual Vehicle Revenue Miles	219,100.0			
Total Actual Vehicle Miles	228,265.0			
Total Operating Expenses	\$1,260,587			
Total Passenger Fare Revenue	\$133,643			
Net Operating Expenses	\$1,126,944			
<b>Performance Indicators</b>				
<b>Mandatory:</b>				
1. Farebox Recovery Ratio	10.60%	>= 10.00%	10.88%	Meets Target
<b>Discretionary:</b>				
1. Operating Cost Per Revenue Hour	\$92.87	<= \$82.23	\$83.76	Fails to Meet Target
2. Subsidy Per Passenger	\$8.55	>= \$6.51 and <= \$8.81	\$7.36	Meets Target
3. Subsidy Per Passenger Mile	\$3.31	>= \$2.55 and <= \$3.45	\$2.88	Meets Target
4. Subsidy Per Hour	\$83.02	>= \$62.19 and <= \$84.15	\$74.65	Meets Target
5. Subsidy Per Mile	\$5.14	>= \$3.86 and <= \$5.22	\$3.39	Better Than Target
6. Passengers Per Revenue Hour	9.70	>= 8.08 and <= 10.93	10.10	Meets Target
7. Passengers Per Revenue Mile	0.60	>= 0.50 and <= 0.68	0.46	Fails to Meet Target
<b>Note:</b> Must meet at least 4 out of 7 Discretionary Performance Indicators				
<b>Productivity Performance Summary:</b> Meets FY 11/12 Farebox Ratio Requirement. Meets 5 of 7 Discretionary Indicators. Meets RCTC PIP Program.				
<b>Service Provider Comments:</b>				

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# **FY 2012/13 - Table 8 -- SRTP Performance Report** **Service Provider: City of Banning** **All Routes**

Performance Indicators	FY 2010/11 End of Year Actual	FY 2011/12 3rd Quarter Year-to-Date	FY 2012/13 Plan	FY 2012/13 Target	Plan Performance Scorecard (a)
Passengers	128,244	102,180	144,091	None	
Passenger Miles	327,258	261,026	445,041	None	
Revenue Hours	13,387.3	10,071.9	15,341.0	None	
Total Hours	14,737.0	11,020.4	16,523.0	None	
Revenue Miles	215,531.2	221,802.1	239,460.0	None	
Total Miles	224,148.1	226,321.9	268,924.0	None	
Operating Costs	\$1,240,257	\$843,591	\$1,310,135	None	
Passenger Revenue	\$122,797	\$91,770	\$138,780	None	
Operating Subsidy	\$1,117,460	\$751,821	\$1,171,355	None	
Operating Costs Per Revenue Hour	\$92.64	\$83.76	\$85.40	<= \$86.73	Meets Target
Operating Cost Per Revenue Mile	\$5.75	\$3.80	\$5.47	None	
Operating Costs Per Passenger	\$9.67	\$8.26	\$9.09	None	
Farebox Recovery Ratio	9.90%	10.88%	10.59%	>= 10.0%	Meets Target
Subsidy Per Passenger	\$8.71	\$7.36	\$8.13	>= \$6.26 and <= \$8.46	Meets Target
Subsidy Per Passenger Mile	\$3.41	\$2.88	\$2.63	>= \$2.45 and <= \$3.31	Meets Target
Subsidy Per Revenue Hour	\$83.47	\$74.65	\$76.35	>= \$64.57 and <= \$87.35	Meets Target
Subsidy Per Revenue Mile	\$5.18	\$3.39	\$4.89	>= \$2.72 and <= \$3.68	Fails to Meet Target
Passengers Per Revenue Hour	9.60	10.10	9.40	>= 8.76 and <= 11.85	Meets Target
Passengers Per Revenue Mile	0.60	0.46	0.60	>= 0.37 and <= 0.49	Better Than Target

a) The Plan Performance Scorecard column is the result of comparing the FY 2012/13 Plan to the FY 2012/13 Primary Target.

**TABLE 9**  
**HIGHLIGHTS OF 2012/13**  
**SHORT RANGE TRANSIT PLAN - BANNING**

- Purchase and install auto display and enunciator equipment in fixed route fleet.
- Purchase and install 6 additional bus shelters, benches and trash receptacles.
- Purchase one fixed route coach.
- Continue to install additional bus stop signs along routes 1, 5, and 6, thereby, reducing the number of flag stops.
- Reinstate full Saturday and Sunday Service to three routes with reduced headway.
- Closely monitor service to the MSJC Pass Campus and address needs as necessary.
- The addition of an Administrative Transit Specialist position to increase efficiency and reporting of data and financial tracking within the transit department.
- In a cooperative effort with the City of Beaumont, contracting for a Comprehensive Analysis of Operations of both services to increase productivity of overall services in the two cities and outlying areas (Cabazon and Calimesa) currently serviced by Pass Transit.
- Continue working with the City of Beaumont staff regarding the coordination of routes, schedules, passenger amenities, and fares to ensure that Pass Transit is seamless and simple to use by Pass area residents.

BANNING TRANSIT SYSTEM/PASS TRANSIT	FY 2008/09 Audited	FY 2009/10 Audited	FY 2010/11 Audited	FY 2011/12 Estimate (Based on 3 <sup>rd</sup> qrtr actuals)	FY 2012/13 Planned
Systemwide Ridership	173,351	127,932	128,244	136,256	144,091
Operating Cost Per Revenue Hours	\$88.15	\$84.33	\$92.64	\$84.80	\$85.40

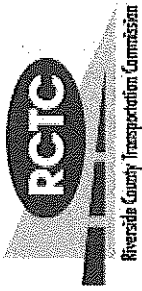
# BEAUMONT TABLES



**Table 1 - Fleet Inventory**  
**FY 2012/13 Short Range Transit Plan**  
**City of Beaumont**

**Bus (Motorbus) / Directly Operated**

Year Built	Mfg. Code	Model Code	Seating Capacity	Lift and Ramp Equipped	Vehicle Length	Fuel Type Code	# of Active Vehicles FY 2011/12	# of Contingency Vehicles FY 2011/12	Life to Date Vehicle Miles Prior Year End FY 2010/11	Life to Date Vehicle Miles through March FY 2011/12	Average Lifetime Miles Per Active Vehicle As Of Year-To-Date (e.g., March) FY 2011/12
2002	BBB		35	2	34	CN	1	0	0	81,119	81,119
2000	BBB	CSRE	30	2	32	DF	1	0	289,493	300,997	300,997
2000	BBB	CSRE	30	2	32	DF	1	0	262,495	275,526	275,526
2010	CMD	GMC 5500	28	2	32	GA	1	0	7,786	53,654	53,654
2005	EDN		14	2	24	GA	1	0	207,535	215,419	215,419
2001	GCC		14	2	24	GA	1	0	250,567	263,721	263,721
2009	GMC	C-5500	28	2	32	CN	1	0	42,467	53,876	53,876
2009	STR		28	2	32	CN	1	0	11,386	39,537	39,537
2010	STR		30	2	32	DF	1	0	8,994	37,159	37,159
<b>Totals:</b>				18			9	0	1,080,723	1,321,008	146,779



**Table 1 - Fleet Inventory**  
**FY 2012/13 Short Range Transit Plan**  
**City of Beaumont**

**Demand Response / Directly Operated**

Year Built	Mfg. Code	Model Code	Seating Capacity	Lift and Ramp Equipped	Vehicle Length	Fuel Type Code	# of Active Vehicles FY 2011/12	# of Contingency Vehicles FY 2011/12	Life to Date Vehicle Miles Prior Year End FY 2010/11	Life to Date Vehicle Miles through March FY 2011/12	Average Lifetime Miles Per Active Vehicle As Of Year-To-Date (e.g., March) FY 2011/12
2010	FRD	Ford E450	16	2	24	GA	1	0	23,151	47,443	47,443
2010	FRD	Ford E-450	16	2	24	GA	1	0	21,219	40,089	40,089
2010	FRD	Ford E-450	16	0	24	GA	1	0	17,710	35,650	35,650
2001	GCC	Ford E-450	16	2	24	GA	1	0	248,691	263,646	263,646
<b>Totals:</b>			64	6			4	0	310,771	386,828	96,707

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**Table 2 -- City of Beaumont -- SRTP Service Summary**  
**FY 2012/13 Short Range Transit Plan**  
**All Routes**

<b>Fleet Characteristics</b>	<b>FY 2009/10 Audited</b>	<b>FY 2010/11 Audited</b>	<b>FY 2011/12 Plan</b>	<b>FY 2011/12 3rd Qtr Actual</b>	<b>FY 2012/13 Plan</b>
Peak-Hour Fleet			12		13
<b>Financial Data</b>					
Total Operating Expenses	\$1,336,326	\$1,233,381	\$1,402,000	\$755,029	\$1,417,500
Total Passenger Fare Revenue	\$257,420	\$215,229	\$190,983	\$116,817	\$179,280
Net Operating Expenses (Subsidies)	\$1,078,906	\$1,018,152	\$1,211,017	\$638,212	\$1,238,220
<b>Operating Characteristics</b>					
Unlinked Passenger Trips	141,629	169,665	181,418	134,932	184,256
Passenger Miles	293,736	345,935	226,535	272,059	367,291
Total Actual Vehicle Revenue Hours (a)	16,840.6	15,856.4	15,756.0	12,197.1	16,215.0
Total Actual Vehicle Revenue Miles (b)	235,662.0	228,901.0	226,535.0	181,987.8	233,134.0
Total Actual Vehicle Miles	249,998.0	243,657.3	241,379.0	198,228.8	256,919.0
<b>Performance Characteristics</b>					
Operating Cost per Revenue Hour	\$79.35	\$77.78	\$88.98	\$61.90	\$87.42
Farebox Recovery Ratio	19.26%	17.45%	13.62%	15.47%	12.64%
Subsidy per Passenger	\$7.62	\$6.00	\$6.68	\$4.73	\$6.72
Subsidy per Passenger Mile	\$3.67	\$2.94	\$5.35	\$2.35	\$3.37
Subsidy per Revenue Hour (a)	\$64.07	\$64.21	\$76.86	\$52.32	\$76.36
Subsidy per Revenue Mile (b)	\$4.58	\$4.45	\$5.35	\$3.51	\$5.31
Passenger per Revenue Hour (a)	8.4	10.7	11.5	11.1	11.4
Passenger per Revenue Mile (b)	0.60	0.74	0.80	0.74	0.79

(a) Train Hours for Rail Modes. (b) Car Miles for Rail Modes.





**Table 2 -- City of Beaumont -- SRTP Service Summary**  
**FY 2012/13 Short Range Transit Plan**  
**Non-Excluded Routes**

	FY 2009/10 Audited	FY 2010/11 Audited	FY 2011/12 Plan	FY 2011/12 3rd Qtr Actual	FY 2012/13 Plan
<b>Fleet Characteristics</b>					
Peak-Hour Fleet			3		6
<b>Financial Data</b>					
Total Operating Expenses	\$1,192,951	\$1,059,850	\$282,000	\$636,420	\$1,026,100
Total Passenger Fare Revenue	\$226,148	\$165,075	\$19,556	\$71,190	\$102,610
Net Operating Expenses (Subsidies)	\$966,804	\$894,775	\$262,444	\$565,230	\$923,490
<b>Operating Characteristics</b>					
Unlinked Passenger Trips	119,177	112,034	21,167	79,816	106,159
Passenger Miles	251,077	236,436	44,360	167,339	218,907
Total Actual Vehicle Revenue Hours (a)	15,611.6	13,808.9	3,727.0	10,371.1	13,730.0
Total Actual Vehicle Revenue Miles (b)	209,050.0	192,974.0	44,360.0	150,532.8	189,496.0
Total Actual Vehicle Miles	218,409.0	201,618.4	46,946.0	156,541.8	198,390.0
<b>Performance Characteristics</b>					
Operating Cost per Revenue Hour	\$76.41	\$76.75	\$75.66	\$61.36	\$74.73
Farebox Recovery Ratio	18.95%	15.58%	6.93%	11.19%	10.00%
Subsidy per Passenger	\$8.11	\$7.99	\$12.40	\$7.08	\$8.70
Subsidy per Passenger Mile	\$3.85	\$3.78	\$5.92	\$3.38	\$4.22
Subsidy per Revenue Hour (a)	\$61.93	\$64.80	\$70.42	\$54.50	\$67.26
Subsidy per Revenue Mile (b)	\$4.62	\$4.64	\$5.92	\$3.75	\$4.87
Passenger per Revenue Hour (a)	7.6	8.1	5.7	7.7	7.7
Passenger per Revenue Mile (b)	0.57	0.58	0.48	0.53	0.56

(a) Train Hours for Rail Modes. (b) Car Miles for Rail Modes.



**Table 2 -- City of Beaumont -- SRTP Service Summary**  
**FY 2012/13 Short Range Transit Plan**  
**Excluded Routes**

	FY 2009/10 Audited	FY 2010/11 Audited	FY 2011/12 Plan	FY 2011/12 3rd Qtr Actual	FY 2012/13 Plan
<b>Fleet Characteristics</b>					
Peak-Hour Fleet			9		7
<b>Financial Data</b>					
Total Operating Expenses	\$143,375	\$173,531	\$1,120,000	\$118,609	\$391,400
Total Passenger Fare Revenue	\$31,273	\$50,154	\$171,427	\$45,627	\$76,670
Net Operating Expenses (Subsidies)	\$112,102	\$123,378	\$948,573	\$72,982	\$314,730
<b>Operating Characteristics</b>					
Unlinked Passenger Trips	22,452	57,631	160,251	55,116	78,097
Passenger Miles	42,659	109,499	182,175	104,720	148,384
Total Actual Vehicle Revenue Hours (a)	1,229.0	2,047.5	12,029.0	1,826.0	2,485.0
Total Actual Vehicle Revenue Miles (b)	26,612.0	35,927.0	182,175.0	31,455.0	43,638.0
Total Actual Vehicle Miles	31,589.0	42,038.9	194,433.0	41,687.0	58,529.0
<b>Performance Characteristics</b>					
Operating Cost per Revenue Hour	\$116.66	\$84.75	\$93.11	\$64.96	\$157.51
Farebox Recovery Ratio	21.81%	28.90%	15.30%	38.47%	19.58%
Subsidy per Passenger	\$4.99	\$2.14	\$5.92	\$1.32	\$4.03
Subsidy per Passenger Mile	\$2.63	\$1.13	\$5.21	\$0.70	\$2.12
Subsidy per Revenue Hour (a)	\$91.22	\$60.26	\$78.86	\$39.97	\$126.65
Subsidy per Revenue Mile (b)	\$4.21	\$3.43	\$5.21	\$2.32	\$7.21
Passenger per Revenue Hour (a)	18.3	28.1	13.3	30.2	31.4
Passenger per Revenue Mile (b)	0.84	1.60	0.88	1.75	1.79

(a) Train Hours for Rail Modes. (b) Car Miles for Rail Modes.



**Table 2 -- Beaumont-BUS -- SRTP Service Summary**  
**FY 2012/13 Short Range Transit Plan**  
**All Routes**

	FY 2009/10 Audited	FY 2010/11 Audited	FY 2011/12 Plan	FY 2011/12 3rd Qtr Actual	FY 2012/13 Plan
<b>Fleet Characteristics</b>					
Peak-Hour Fleet			9		10
<b>Financial Data</b>					
Total Operating Expenses	\$976,550	\$889,114	\$1,120,000	\$559,930	\$1,135,500
Total Passenger Fare Revenue	\$180,959	\$194,706	\$171,427	\$98,289	\$151,080
Net Operating Expenses (Subsidies)	\$795,591	\$694,408	\$948,573	\$461,641	\$984,420
<b>Operating Characteristics</b>					
Unlinked Passenger Trips	120,014	148,988	160,251	121,170	169,164
Passenger Miles	228,027	283,077	182,175	230,223	321,411
Total Actual Vehicle Revenue Hours (a)	12,230.7	12,097.3	12,029.0	9,359.4	12,431.0
Total Actual Vehicle Revenue Miles (b)	182,431.0	183,214.0	182,175.0	148,897.8	189,014.0
Total Actual Vehicle Miles	193,318.0	195,076.5	194,433.0	162,530.8	209,322.0
<b>Performance Characteristics</b>					
Operating Cost per Revenue Hour	\$79.84	\$73.50	\$93.11	\$59.83	\$91.34
Farebox Recovery Ratio	18.53%	21.90%	15.30%	17.55%	13.30%
Subsidy per Passenger	\$6.63	\$4.66	\$5.92	\$3.81	\$5.82
Subsidy per Passenger Mile	\$3.49	\$2.45	\$5.21	\$2.01	\$3.06
Subsidy per Revenue Hour (a)	\$65.05	\$57.40	\$78.86	\$49.32	\$79.19
Subsidy per Revenue Mile (b)	\$4.36	\$3.79	\$5.21	\$3.10	\$5.21
Passenger per Revenue Hour (a)	9.8	12.3	13.3	12.9	13.6
Passenger per Revenue Mile (b)	0.66	0.81	0.88	0.81	0.89

(a) Train Hours for Rail Modes. (b) Car Miles for Rail Modes.

**Table 2 -- Beaumont-DAR -- SRTP Service Summary**  
**FY 2012/13 Short Range Transit Plan**  
**All Routes**

	FY 2009/10 Audited	FY 2010/11 Audited	FY 2011/12 Plan	FY 2011/12 3rd Qtr Actual	FY 2012/13 Plan
<b>Fleet Characteristics</b>					
Peak-Hour Fleet			3		3
<b>Financial Data</b>					
Total Operating Expenses	\$359,776	\$344,267	\$282,000	\$195,099	\$282,000
Total Passenger Fare Revenue	\$76,461	\$20,523	\$19,556	\$18,528	\$28,200
Net Operating Expenses (Subsidies)	\$283,315	\$323,744	\$262,444	\$176,571	\$253,800
<b>Operating Characteristics</b>					
Unlinked Passenger Trips	21,615	20,677	21,167	13,762	15,092
Passenger Miles	65,710	62,858	44,360	41,836	45,880
Total Actual Vehicle Revenue Hours (a)	4,609.9	3,759.1	3,727.0	2,837.7	3,784.0
Total Actual Vehicle Revenue Miles (b)	53,231.0	45,687.0	44,360.0	33,090.0	44,120.0
Total Actual Vehicle Miles	56,680.0	48,580.8	46,946.0	35,698.0	47,597.0
<b>Performance Characteristics</b>					
Operating Cost per Revenue Hour	\$78.04	\$91.58	\$75.66	\$68.75	\$74.52
Farebox Recovery Ratio	21.25%	5.96%	6.93%	9.50%	10.00%
Subsidy per Passenger	\$13.11	\$15.66	\$12.40	\$12.83	\$16.82
Subsidy per Passenger Mile	\$4.31	\$5.15	\$5.92	\$4.22	\$5.53
Subsidy per Revenue Hour (a)	\$61.46	\$86.12	\$70.42	\$62.22	\$67.07
Subsidy per Revenue Mile (b)	\$5.32	\$7.09	\$5.92	\$5.34	\$5.75
Passenger per Revenue Hour (a)	4.7	5.5	5.7	4.8	4.0
Passenger per Revenue Mile (b)	0.41	0.45	0.48	0.42	0.34

(a) Train Hours for Rail Modes. (b) Car Miles for Rail Modes.



**Table 3 - SRTP Route Statistics**  
City of Beaumont -- 2  
FY 2012/13  
All Routes

**Data Elements**

Route #	Day Type	Peak Vehicles	Passengers	Passenger Miles	Revenue Hours	Total Hours	Revenue Miles	Total Miles	Operating Cost	Passenger Revenue	Net Subsidy
BEA-10	Total	1	15,141	28,768	448.0	448.0	4,896.0	4,896.0	\$48,000	\$9,600	\$38,400
BEA-11	Total	1	5,969	11,341	156.0	217.0	2,867.0	3,368.0	\$48,000	\$9,600	\$38,400
BEA-120	Total	1	252	479	199.0	309.0	5,220.0	9,584.0	\$4,900	\$490	\$4,410
BEA-17	Total	1	15,156	28,796	477.0	682.0	9,213.0	12,756.0	\$78,600	\$15,600	\$63,000
BEA-2	Total	1	32,167	61,117	3,829.0	4,023.0	68,874.0	71,896.0	\$254,700	\$25,470	\$229,230
BEA-3	Total	1	25,932	49,271	2,704.0	2,895.0	38,776.0	40,018.0	\$234,700	\$23,470	\$211,230
BEA-4	Total	1	32,968	62,639	3,413.0	3,545.0	37,726.0	38,879.0	\$254,700	\$25,470	\$229,230
BEA-7	Total	2	25,147	47,779	788.0	1,132.0	15,536.0	20,116.0	\$126,000	\$25,200	\$100,800
BEA-9	Total	1	16,432	31,221	417.0	580.0	5,906.0	7,709.0	\$85,900	\$16,180	\$69,720
BEA-DAR	Total	3	15,092	45,880	3,784.0	4,108.0	44,120.0	47,597.0	\$282,000	\$28,200	\$253,800
<b>Service Provider Totals</b>		13	184,256	367,291	16,215.0	17,939.0	233,134.0	256,919.0	\$1,417,500	\$179,280	\$1,238,220



**Table 3 - SRTP Route Statistics**  
City of Beaumont -- 2  
FY 2012/13  
All Routes

Route #	Day Type	Performance Indicators									
		Operating Cost Per Revenue Hour	Operating Cost Per Revenue Mile	Cost Per Passenger	Farebox Recovery Ratio	Subsidy Per Passenger	Subsidy Per Passenger Mile	Subsidy Per Revenue Hour	Subsidy Per Revenue Mile	Passengers Per Hour	Passengers Per Mile
BEA-10	Total	\$107.14	\$9.80	\$3.17	20.00%	\$2.54	\$1.33	\$85.71	\$7.84	33.8	3.09
BEA-11	Total	\$307.69	\$16.74	\$8.04	20.00%	\$6.43	\$3.39	\$246.15	\$13.39	38.3	2.08
BEA-120	Total	\$24.62	\$0.94	\$19.44	10.00%	\$17.50	\$9.21	\$22.16	\$0.84	1.3	0.05
BEA-17	Total	\$164.78	\$8.53	\$5.19	19.84%	\$4.16	\$2.19	\$132.08	\$6.84	31.8	1.65
BEA-2	Total	\$66.52	\$3.70	\$7.92	10.00%	\$7.13	\$3.75	\$59.87	\$3.33	8.4	0.47
BEA-3	Total	\$86.80	\$6.05	\$9.05	10.00%	\$8.15	\$4.29	\$78.12	\$5.45	9.6	0.67
BEA-4	Total	\$74.63	\$6.75	\$7.73	10.00%	\$6.95	\$3.66	\$67.16	\$6.08	9.7	0.87
BEA-7	Total	\$159.90	\$8.11	\$5.01	20.00%	\$4.01	\$2.11	\$127.92	\$6.49	31.9	1.62
BEA-9	Total	\$206.00	\$14.54	\$5.23	18.83%	\$4.24	\$2.23	\$167.19	\$11.80	39.4	2.78
BEA-DAR	Total	\$74.52	\$6.39	\$18.69	10.00%	\$16.82	\$5.53	\$67.07	\$5.75	4.0	0.34
Service Provider Totals		\$87.42	\$6.08	\$7.69	12.64%	\$6.72	\$3.37	\$76.36	\$5.31	11.4	0.79

Table 3A – Individual Route Descriptions		
Line	Route Description	Areas/Sites Served
2	Wal-Mart shopping center west to Beaumont then east to Cabazon via 6th Street/Ramsey St.	2nd Street Marketplace shopping center and transfer point to RTA, San Geronio hospital, Beaumont Civic Center, banks, downtown Beaumont, Wellwood Child Care, Three Rings Ranch, Noble Creek Park District, Oak Valley Community, Stater Bros./Walgreens shopping center, Orchard Park Apartments, Sports Park, shopping/restaurants along 6th Street, Mt. View and San Geronio middle schools, Palm Elementary, Beaver Medical Clinic, DPSS, Banning City Hall, unincorporated Cabazon, Desert Hills outlet mall, Cabazon Outlet Mall, and Morongo Resort Casino
3	Wal-Mart shopping center then north through Sundance community to Beaumont High School with immediate return via the same route	2nd Street Marketplace shopping center and transfer to RTA, San Geronio hospital, Sundance elementary, Sundance Community, Orchard Park Apartments, Mt. View and San Geronio middle schools, Sports Park, Cherry Valley, and Beaumont High School
4	Wal-Mart shopping center then north to hospital, west via 6th Street then north on Beaumont Ave., south on Pennsylvania	2nd Street Marketplace shopping center and transfer point to RTA, San Geronio hospital, Beaumont Civic Center, banks, downtown Beaumont, library, Stater Bros./Walgreens shopping center, Orchard Park Apartments, Sports Park, shopping/restaurants along 6th Street and Beaumont Ave, Mt. View and San Geronio middle schools, and various apartment complexes
7	Oak Valley Parkway, Palmer, Cherry Valley Blvd, Brookside, Beaumont Ave back to Oak Valley and repeat loop.	Fairway Canyon, Tournament Hills, Beaumont High, Mt. View Middle School, San Geronio Middle school, Oak Valley Greens, Oak Valley Shopping Center, Stetson community, and Cherry Valley
9	WalMart shopping center to Seneca Springs, north on Pennsylvania to Palm Ave. and continuing north on Beaumont Ave.	WalMart and 2nd Street Marketplace, Seneca Springs community, Four Seasons Active Retirement community, Loma Linda Medical Center, San Geronio Middle School, Oak Valley Shopping Center, Mt. View Middle School, and Beaumont High School
10	Beaumont High School south through Sundance, west on 6th Street to Three Rings and then north on Beaumont Ave through downtown	Beaumont High School, Sports Park, Orchard Park Apartments, Mt. View and San Geronio middle schools, four elementary schools, Beaumont Civic Center, banks, downtown Beaumont, Noble Creek Park, restaurants and shopping, and Cherry Valley
11	Banning Midway west via 6th Street to downtown and north to high school	Banning Midway, San Geronio Hospital, Noble Creek Apts., Civic Center, Three Rings Ranch, Oak Valley Community, Cherry Valley, Beaumont High School, Mt. View Middle School
17	Cherry Valley Blvd, Champions, Desert Lawn, Brookside, Beaumont Ave, Cougar Way, Oak Valley Parkway and repeat loop.	Fairway Canyon, Tournament Hills, Brookside Elementary, Beaumont High School, Mt. View Middle School, and Stater Bros shopping center.
25	Beaumont Ave, Palm, Oak Valley Parkway, 6 <sup>th</sup> Street, Highland Springs, Wal-Mart shopping center, Beaumont Ave and repeat loop.	Central Beaumont and local shopping centers
120	Wal-Mart to San Bernardino Metrolink	Commuter Link with direct service from Wal-Mart to San Bernadino Metrolink and back.

City of Beaumont  
FY 2012/13  
Summary of Funds Requested  
Short Range Transit Plan

**Table 4 - Summary of Funds Requested for FY-2012/13**

Project Description	Capital Project Number (1)	Total Amount of Funds	LTF	STA	Prop 1B (PTMISEA)	Prop 1B Security	Measure A	Fare Box	Other (2)
Operating Expenses		\$1,417,500	\$1,238,220					\$179,280	
<b>Subtotal: Operating</b>		\$1,417,500	\$1,238,220	\$0	\$0	\$0	\$0	\$179,280	\$0
Building Improvements	FY 13-01	\$150,000		\$150,000					
<b>Subtotal: Capital</b>		\$150,000	\$0	\$150,000	\$0	\$0	\$0	\$0	\$0
<b>Total: Operating &amp; Capital</b>		<b>\$1,567,500</b>	<b>\$1,238,220</b>	<b>\$150,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$179,280</b>	<b>\$0</b>



SRTP FY 12-13

Table 4 – Capital Project Justification

PROJECT NUMBER

FY 13-01

PROJECT NAME

Building Improvements

PROJECT DESCRIPTION

This project will include updating the transit office, shop area, bathrooms and driveway.

PROJECT JUSTIFICATION

The transit office is over 60 years old. The mechanics are working in the elements as most of the shop is outdoors. The driveway is cracked and dangerous.

PROJECT FUNDING SOURCES (REQUESTED)

STA Funds                      \$150,000

PRIOR YEAR PROJECTS OF A SIMILAR NATURE WITH  
UNEXPENDED BALANCE – OR PROJECTS APPROVED BUT NOT YET  
ORDERED – INCLUDE FTA GRANT NUMBER AND RCTC'S CAPITAL  
GRANT NUMBER

None

City of Beaumont  
FY 2013/14  
Summary of Funds Requested  
Short Range Transit Plan

**Table 5.1 - Summary of Funds Requested for FY 2013/14**

Project Description	Capital Project Number (1)	Total Amount of Funds	LTF	STA	Prop 1B (PTMISEA)	Prop 1B Security	Measure A	Fare Box	Other <sup>2a</sup>
Operating Expenses		\$1,450,000	\$1,305,000					\$145,000	
<b>Subtotal: Operating</b>		\$1,450,000	\$1,305,000	\$0	\$0	\$0	\$0	\$145,000	\$0
2 Type 7 Buses for expansion	FY 14-01	\$300,000		\$300,000					
<b>Subtotal: Capital</b>		\$300,000	\$0	\$300,000	\$0	\$0	\$0	\$0	\$0
<b>Total: Operating &amp; Capital</b>		\$1,750,000	\$1,305,000	\$300,000	\$0	\$0	\$0	\$145,000	\$0

**TABLE 5.1A – Capital Project Justification**

**PROJECT NUMBER**

FY 14-01

**PROJECT NAME**

Procure 2 Type VII Buses.

**PROJECT DESCRIPTION**

2 Type VI Buses are planned to be procured for expansion.

**PROJECT JUSTIFICATION**

This type of bus is needed for utilizing on routes.

**PROJECT FUNDING SOURCES (REQUESTED)**

STA Funds            \$300,000

**PRIOR YEAR PROJECTS OF A SMILIAR NATURE WITH UNEXPENDED BALANCE –  
OR PROJECTS APPROVED BUT NOT YET ORDERED – INCLUDE FTA GRANT  
NUMBER AND RCTC'S CAPITAL GRANT NUMBER**

None

City of Beaumont  
FY 2014/15  
Summary of Funds Requested  
Short Range Transit Plan

Table 5.2 - Summary of Funds Requested for FY 2014/15

Project Description	Capital Project Number (1)	Total Amount of Funds	LTF	STA	Prop 1B (PTM/SEA)	Prop 1B Security	Measure A	Fare Box	Other (4)
Operating Expenses		\$1,475,000	\$1,327,500					\$147,500	
<b>Subtotal: Operating</b>		\$1,475,000	\$1,327,500	\$0	\$0	\$0	\$0	\$147,500	\$0
2 Type 7 Buses for expansion/replacement	FY 15-01	\$300,000		\$300,000					
<b>Subtotal: Capital</b>		\$300,000	\$0	\$300,000	\$0	\$0	\$0	\$0	\$0
<b>Total: Operating &amp; Capital</b>		<b>\$1,775,000</b>	<b>\$1,327,500</b>	<b>\$300,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$147,500</b>	<b>\$0</b>

**TABLE 5.2A – Capital Project Justification**

**PROJECT NUMBER**

FY 15-01

**PROJECT NAME**

Procure 2 Type VII Buses.

**PROJECT DESCRIPTION**

2 Type VI Buses are planned to be procured for expansion and possible replacement.

**PROJECT JUSTIFICATION**

This type of bus is needed for utilizing on routes.

**PROJECT FUNDING SOURCES (REQUESTED)**

STA Funds            \$300,000

**PRIOR YEAR PROJECTS OF A SMILIAR NATURE WITH UNEXPENDED BALANCE –  
OR PROJECTS APPROVED BUT NOT YET ORDERED – INCLUDE FTA GRANT  
NUMBER AND RCTC'S CAPITAL GRANT NUMBER**

None

# CITY OF BEAUMONT TRANSIT SYSTEM

## SRTP 2012/13-2014/15

**TABLE 6 – PROGRESS TO IMPLEMENT TRIENNIAL PERFORMANCE AUDIT**

<b>Audit Recommendations (Covering FY 2006/07 – FY 2008/09)</b>	<b>Action(s) Taken And Results (1)</b>
<p><b>1. Need to ensure that the State Controller Reports are completed and submitted in a timely manner.</b></p> <p>Recommendation to implement policies and procedures to ensure that the State Controller Reports are prepared and submitted in a timely manner as required by PUC Section 99243.</p>	<p><b>COMPLETED</b></p> <p>Procedures are in place to prevent further delays in completion of these important documents.</p>

(1) If no action take, provide schedule for implementation or explanation of why the recommendation is no longer relevant.



**Table 7 -- Service Provider Performance Targets Report**  
 FY 2011/12 Short Range Transit Plan Review  
 City of Beaumont

Data Elements	FY 2011/12 Plan	FY 2011/12 Target	FY 2011/12 Year to Date Through 3rd Quarter	Year to Date Performance Scorecard
Unlinked Passenger Trips	181,418			
Passenger Miles	226,535			
Total Actual Vehicle Revenue Hours	15,756.0			
Total Actual Vehicle Revenue Miles	226,535.0			
Total Actual Vehicle Miles	241,379.0			
Total Operating Expenses	\$1,402,000			
Total Passenger Fare Revenue	\$190,983			
Net Operating Expenses	\$1,211,017			
<b>Performance Indicators</b>				
<b>Mandatory:</b>				
1. Farebox Recovery Ratio	13.62%	>= 10.00%	15.47%	Meets Target
<b>Discretionary:</b>				
1. Operating Cost Per Revenue Hour	\$88.98	<= \$62.88	\$61.90	Meets Target
2. Subsidy Per Passenger	\$6.68	>= \$4.40 and <= \$5.96	\$4.73	Meets Target
3. Subsidy Per Passenger Mile	\$5.35	>= \$2.16 and <= \$2.92	\$2.35	Meets Target
4. Subsidy Per Hour	\$76.86	>= \$47.46 and <= \$64.22	\$52.32	Meets Target
5. Subsidy Per Mile	\$5.35	>= \$3.30 and <= \$4.46	\$3.51	Meets Target
6. Passengers Per Revenue Hour	11.50	>= 9.18 and <= 12.42	11.10	Meets Target
7. Passengers Per Revenue Mile	0.80	>= 0.64 and <= 0.86	0.74	Meets Target
<b>Note:</b> Must meet at least 4 out of 7 Discretionary Performance Indicators				
<b>Productivity Performance Summary:</b> Meets FY 11/12 Farebox Ratio Requirement. Meets 7 of 7 Discretionary Indicators. Meets RCTC PIP Program.				
<b>Service Provider Comments:</b>				

# FY 2012/13 - Table 8 -- SRTP Performance Report

## Service Provider: City of Beaumont

### All Routes

Performance Indicators	FY 2010/11 End of Year Actual	FY 2011/12 3rd Quarter Year-to-Date	FY 2012/13 Plan	FY 2012/13 Target	Plan Performance Scorecard (a)
Passengers	169,665	134,932	184,256	None	
Passenger Miles	345,935	272,059	367,291	None	
Revenue Hours	15,856.4	12,197.1	16,215.0	None	
Total Hours	17,330.2	13,462.7	17,939.0	None	
Revenue Miles	228,901.0	181,987.8	233,134.0	None	
Total Miles	243,657.3	198,228.8	256,919.0	None	
Operating Costs	\$1,233,381	\$755,029	\$1,417,500	None	
Passenger Revenue	\$215,229	\$116,817	\$179,280	None	
Operating Subsidy	\$1,018,152	\$638,212	\$1,238,220	None	
Operating Costs Per Revenue Hour	\$77.78	\$61.90	\$87.42	<= \$62.99	Fails to Meet Target
Operating Cost Per Revenue Mile	\$5.39	\$4.15	\$6.08	None	
Operating Costs Per Passenger	\$7.27	\$5.60	\$7.69	None	
Farebox Recovery Ratio	17.45%	15.47%	12.64%	>= 10.0%	Meets Target
Subsidy Per Passenger	\$6.00	\$4.73	\$6.72	>= \$4.02 and <= \$5.44	Fails to Meet Target
Subsidy Per Passenger Mile	\$2.94	\$2.35	\$3.37	>= \$2.00 and <= \$2.70	Fails to Meet Target
Subsidy Per Revenue Hour	\$64.21	\$52.32	\$76.36	>= \$44.47 and <= \$60.17	Fails to Meet Target
Subsidy Per Revenue Mile	\$4.45	\$3.51	\$5.31	>= \$2.98 and <= \$4.04	Fails to Meet Target
Passengers Per Revenue Hour	10.70	11.10	11.40	>= 9.44 and <= 12.77	Meets Target
Passengers Per Revenue Mile	0.74	0.74	0.79	>= 0.63 and <= 0.85	Meets Target

a) The Plan Performance Scorecard column is the result of comparing the FY 2012/13 Plan to the FY 2012/13 Primary Target.



Table 9

HIGHLIGHTS OF SHORT RANGE TRANSIT PLAN BEAUMONT

- Complete a Comprehensive Operations Analysis in conjunction with the City of Banning, RTA and Sunline
- Implement minor route changes to existing routes to increase service and improve customer service
- Increase bus service on current routes by adding additional buses at peak times
- Increase service regionally to San Bernardino County
- Purchase GPS system for all vehicles to track vehicle locations
- Coordinate Tenant Improvements on existing Transit office
- Install more bus shelters and bus benches throughout service area to improve and enhance service provided with the city of Beaumont
- Expand outreach efforts to senior citizen organizations, schools and major employers
- Finalize and print a system-wide map showing all Beaumont and Banning routes
- Continue to work with the City of Banning to improve coordination of routes, schedules, passenger amenities, and fares to ensure that Pass Transit is seamless and simple to use by Pass Area residents

Operating and Financial Data	FY 08/09 Audited	FY 09/10 Audited	FY 10/11 Audited	FY 11/12 Estimated	FY 12/13 Planned
Systemwide Ridership	98,039	141,629	169,665	179,905	184,256
Operating Costs per Revenue Hour	\$85.91	\$79.35	\$77.78	\$80.03	\$87.42

**CITY COUNCIL  
CONSENT**

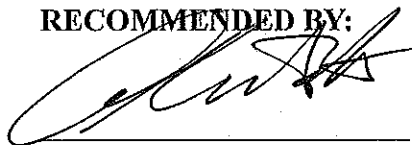
**DATE:** July 24, 2012  
**TO:** City Council  
**FROM:** Dave Aleshire, City Attorney  
**SUBJECT:** Joint Defense, Indemnification and Confidentiality Agreement

**RECOMMENDATIONS:** That the City Council approve the joint defense agreement between Pardee Homes and the City of Banning.

**BACKGROUND:** The proposed Joint Defense Agreement ("JDA") relates to the defense of two litigation actions, (i) Highland Springs Resort v. City of Banning, Riverside County Superior Court Case No. RIC 1206246, and (ii) Cherry Valley Pass Acres and Neighbors, et al. v. City of Banning, Riverside County Superior Court Case No. RIC 1206271 (each a "Proceeding") pertaining to the March 27, 2012, certification of the environmental impact report ("EIR") and approval of the Butterfield Specific Plan by developer Pardee Homes ("Pardee"). Pardee will pay the costs of defending the Proceedings and has already made a deposit of money for such defense in order to alleviate the use of public funds. Moreover, the City and Pardee have agreed to cooperate in their defense against the Proceedings, and will thus be required to cooperatively exchange confidential information without compromising their defense. The proposed JDA accomplishes these ends.

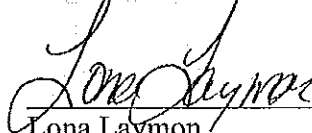
**FISCAL DATA:** Expenses related to the agreement will be paid by Pardee Homes.

**RECOMMENDED BY:**



Andrew J. Takata  
City Manager

**PREPARED BY:**



Lona Laymon  
Assistant City Attorney

Attachment: Joint Defense Agreement

## **JOINT DEFENSE, INDEMNIFICATION AND CONFIDENTIALITY AGREEMENT**

This Joint Defense and Confidentiality Agreement ("Agreement") is made effective as of July 24, 2012, by and between PARDEE HOMES ("Pardee"), a California corporation, and the CITY OF BANNING ("City"), a city within the County of Riverside, State of California (Pardee and the City shall be collectively referred to herein as the "Parties").

### **RECITALS:**

A. The City is a municipal subdivision of the State of California, located in the County of Riverside.

B. Pardee is a California corporation in the business of developing residential subdivisions in the State of California.

C. The Parties are each interested in (i) Highland Springs Resort v. City of Banning, Riverside County Superior Court Case No. RIC 1206246, and (ii) Cherry Valley Pass Acres and Neighbors, et al. v. City of Banning, Riverside County Superior Court Case No. RIC 1206271 (each, a "Case" or "Proceeding"), each of which alleges violations of the California Environmental Quality Act and seeks to set aside the certification of the environmental impact report ("EIR") and approval of the Butterfield Specific Plan, and other related actions concerning the City's approvals that occurred on March 27, 2012 (collectively referred to as the "Project").

D. It is in the Parties' best interests to share information and resources relating to defense of the Case(s) and to agree upon the use of confidential and otherwise privileged communications and work-product shared as part of those endeavors.

E. Nothing in this Agreement is meant or should be construed to abrogate the City's legal obligation to exercise independent judgment as required by CEQA concerning the EIR or consideration of Project approvals.

### **AGREEMENT:**

1. The Parties, incorporating the above recitals as part of their Agreement, in consideration of the mutual promises and obligations as contained herein, do hereby memorialize their Agreement as follows:

a. Brownstein Hyatt Farber Schreck, LLP ("BHFS") will represent the interests of Pardee. The City will be separately represented by its counsel Aleshire & Wynder, LLP ("A&W"). The Parties hereby acknowledge that the requirements of Section 3-310 of the California Rules of Professional Conduct regarding disclosure of potential conflicts have been satisfied.

b. As part of an effort to establish a joint defense strategy for the Case(s), each of the Parties and their counsel desire to share certain documents, facts, opinions and other information in confidence and generally to pool their respective work product for their common purpose and benefit.

c. This common purpose and benefit includes, but is not limited to, minimizing the costs of representation and enhancing the effectiveness of representation of the Parties in pending or future legal or administrative proceedings relating to or arising from the Case(s). It is acknowledged that the Parties may have specific separate and distinct interests in the Case(s) and related issues, but that they also have common interests and objectives.

d. The Parties have agreed to provide reasonable cooperation in the execution of their respective duties.

e. The documents, facts, opinions and other information that the Parties wish to share ("Joint Defense Communications") concern the Case(s). In the absence of such sharing, these Joint Defense Communications would be privileged from disclosure to third-parties by the attorney-client privilege, the work product doctrine and/or other applicable privileges. The Parties have agreed that all Joint Defense Communications shall remain privileged or protected when communicated to the other Party or its counsel in accordance with the common purpose concepts contained in California Evidence Code section 912(d) and articulated in *California Oak Foundation v. County of Tehama et al.* (2009) 174 Cal.App. 4th 1217, and, *Raytheon Co. v. Superior Court* (1989) 208 Cal.App.3d 683, and *Continental Oil Co. v. United States* (9th Cir. 1964) 330 F.2d 347, and their progeny.

(1) Each of the Parties and counsel agree that any Joint Defense Communications they receive from any other Party or its representatives shall be treated and maintained as privileged and confidential communications.

(2) Any exchange of Joint Defense Communications shall not compromise, waive or otherwise diminish in any way the confidentiality of the Joint Defense Communications, and the Joint Defense Communications shall continue to be protected by the attorney-client privilege, the work product doctrine, the joint defense privilege and/or any other applicable privilege. Execution of this Agreement constitutes mutual agreement that any consultations among the Parties and their respective counsel, and any sharing or pooling of work product or other confidential documents, are reasonably necessary for the accomplishment of the purpose for which the Parties' counsel have been consulted and retained. The Parties agree that any consultations among them or their counsel, and any sharing or pooling of work product or other confidential documents are in reliance on the joint litigants' privilege. The Parties further agree that the joint litigants' privilege as it relates to the consultations, information, data, and other documents covered by this Agreement may not be waived except with the consent of both Parties.

(3) Counsel receiving Joint Defense Communications and materials may disclose those communications to their respective clients, but may not disclose such Joint Defense Communications to any other person without the consent of the Party providing the privileged and confidential information. Any unauthorized disclosure of any Joint Defense Communication to any third-party shall not constitute a waiver of any applicable privilege.

(4) Any Party that receives Joint Defense Communications may disclose them in accordance with this paragraph only if such disclosure is required by a judicial order, administrative order or subpoena. In the event that any third Party request, by subpoena or

otherwise, Joint Defense Communications received pursuant to this Agreement, the Party receiving such request or demand shall, prior to making such disclosure: (i) immediately notify in writing the other Party pursuant to the notice provisions below; and (ii) assert, and exercise commercially reasonable efforts to pursue the joint defense privilege and any and all other potentially applicable privileges or defense to such disclosure.

(5) In the event a Party believes another Party is preparing to disclose documents or information that constitute Joint Defense Communications, the Party may seek an injunction to prevent the disclosure of such Joint Defense Communications. The Parties represent and warrant that they will not, in the future, assert that such an injunction is not necessary on the grounds that there is an adequate remedy at law.

(6) To the extent that any Party has already exchanged Confidential Information with another Party, such exchanges are now subject to the terms of this Agreement. This Agreement memorializes earlier oral Agreements, pursuant to which information may have been shared or exchanged.

(7) In the event that one or more of the Parties concludes either Case by reason of settlement or otherwise, or if one or more of the Parties shall voluntarily cease to be a part of this common litigation endeavor, the Parties shall be obligated to continue to protect the confidentiality of all Joint Defense Information, as though all Parties were still active in the common litigation endeavor.

(8) This Agreement shall apply to any and all consultants retained by each of the Parties and to each of the Parties' legal counsel.

(9) This Agreement shall not preclude use of Joint Defense Communications obtained by any of the former Parties while a participant in the joint litigation endeavor in any such subsequent action or proceeding.

2. By this Agreement, the Parties acknowledge and agree that cooperation in the shared purpose and objectives necessarily involves the communication and sharing of confidential information and further agree that their interests are not currently adverse as regards the subject of this Agreement. Each of the Parties hereto has had full opportunity to consult with its separate counsel, is fully informed, and had concluded that the risk of any potential conflict of interest is outweighed by the benefits and economies of cooperation and shared information in the exploration and study regarding this matter. The Parties consent to this sharing of confidential information, waive any potential conflict of interest created thereby, and mutually agree that this sharing of confidential information and cooperation with respect to the subject of this Agreement shall not constitute grounds to seek disqualification of counsel in any other matter. The Parties hereto expressly acknowledge and agree that no adequate remedy is available at law for a breach of this Agreement and that performance of this Agreement may be specifically ordered or a breach hereof may be enjoined, or both. The Parties further agree their remedies under this Agreement shall be limited to injunction and specific performance and that neither Party shall be liable to the other for monetary damages in the event of a breach of this Agreement.

3. Nothing in this Agreement shall obligate either Party to exchange documents or information with the other Party.

4. Nothing in this Agreement is an admission of liability or fault regarding any alleged facts or legal contentions that are or might be alleged with respect to the Proceedings. Except as specifically provided herein, nothing in this Agreement shall waive, release, or otherwise affect any right, claim, interest, cause of action, or defense that any Party may have with respect to any person or entity.

5. This Agreement is intended to facilitate the fair and efficient administration of justice and to protect the legitimate interests of the Parties as recognized by law. This Agreement and any communications or activities contemplated by this Agreement are not intended to and shall not be construed in any way as evidence of agency, conspiracy, or otherwise used to support any adverse inference against either Party.

6. This Agreement does not form a joint venture or partnership by or among the Parties.

7. This Agreement shall be interpreted and enforced pursuant to the laws of the State of California.

8. If any provision of this Agreement is found invalid or unenforceable, the balance of the Agreement shall remain in full force and effect.

9. Each Party represents and warrants to each other Party that its signatory to this Agreement has the authority to bind the Party, and this Agreement does in fact bind the Party.

10. All notices and demands of any kind which any Party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the Party so to be served as follows:

**To City:**

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

**With a copy to:**

June S. Ailin  
Aleshire & Wynder, LLP  
2361 Rosecrans Ave., Suite 475  
El Segundo, CA 90245-4916

**To Pardee:**

Michael McGee  
Pardee Homes  
10880 Wilshire Blvd., Suite 1900  
Los Angeles, CA 90024

**With a copy to:**

Diane De Felice  
Brownstein Hyatt Farber Schreck  
2029 Century Park East, Suite 2100  
Los Angeles, CA 90067

11. The Agreement may be signed in counterparts, each of which shall be binding on all Parties who are signatory to any counterpart.

12. This Agreement sets forth the entire Agreement of the Parties and no other terms are binding on the Parties. Any changes to this Agreement must be made in writing and signed by the Parties.

**SIGNATURE PAGE TO  
JOINT DEFENSE AGREEMENT**

Dated: \_\_\_\_\_

**“City”  
CITY OF BANNING**

By: \_\_\_\_\_  
Don Robinson  
City of Banning  
Mayor

Dated: \_\_\_\_\_

**“A&W”  
ALESHIRE & WYNDER, LLP**

By: \_\_\_\_\_  
David J. Aleshire, Esq.  
for Aleshire & Wynder, LLP

SIGNATURE PAGE TO  
JOINT DEFENSE AGREEMENT

Dated: \_\_\_\_\_

**“Pardee”  
PARDEE HOMES**

By: \_\_\_\_\_  
Michael V. McGee  
Pardee Homes, a California  
Corporation  
President and CEO

Dated: \_\_\_\_\_

**“BHFS”  
BROWNSTEIN HYATT FARBER  
SCHRECK**

By: \_\_\_\_\_  
Diane De Felice, Esq.  
for Brownstein Hyatt Farber Schreck,  
a California corporation



## **CITY OF BANNING**

**DATE:** July 24, 2012

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

**FROM:** Bill R. Manis, Economic Development Director

**SUBJECT:** Adoption of Resolution No. 2012-02 FA and an Outline of the Revenue Bond Approach to Raise EB-5 Funds

### **RECOMMENDATION:**

That the City Council:

- (1) Adopt Resolution No. 2012-02 FA of the Banning Financing Authority confirming its intention to issue taxable revenue bonds to be purchased in limited offerings by a partnership associated with EB-5 investors to facilitate economic development projects; and
- (2) Authorize the City Manager, Administrative Services Director/Deputy City Manager, and the Economic Development Director to work with the representatives of Inland Investor Visa Group 8, Inc. to facilitate the issuance of the taxable revenue bonds.

### **BACKGROUND:**

As part of the City's ongoing efforts to facilitate economic development related activity and to encourage public/private partnerships, staff has been introduced to an approach that offers significant advantages to potential EB-5 Investors. As background, the United States Citizenship and Immigration Service ("USCIS") administers the Immigrant Investor Program, also known as EB-5. The program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under a pilot immigration program first enacted in 1992 and regularly reauthorized since, certain EB-5 visas also are set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth.

As the City Council is aware, the EB-5 Program is being utilized by Art Pearlman and Mark Frost, the developers (who have formed an entity called JMA Village LLC ("JMA Village") for this purpose) - for the Village at Paseo San Gorgonio mixed-use Project. JMA Village is utilizing the professional services of Inland Investor Visa Group 8, Inc. ("IIVG8"), a company specializing in funding qualified projects in the U.S. through the EB-5 program. The IIVG8 team believes there are significant advantages to implementing EB-5 financing through the use of Revenue Bonds issued by public agencies. IIVG8 has met with City staff to go over their research and to discuss their approach with the USCIS experts at Fragomen, Del Rey, Bernsen & Loewy (Fragomen) and the experienced municipal bond counsel at Fulbright & Jaworski (Fulbright). IIVG8 has determined that this approach is entirely viable.

The following is a summary of how such an approach might work, using the Village at Paseo San Gorgonio Project ("the Project") in Banning as an example:

1. **Supporting Documents are prepared:** The IIVG8 team would prepare the necessary documentation to support a public bond issuance; in addition to Fragomen and Fulbright, the team would include Mike Evans, the experienced EB-5 economic analyst and Marge Lessard, the Business Plan writer. Working closely with JMA Village, the Economic Analysis (verifying job creation) and Business Plan for the USCIS submittal would be prepared; an additional key document would be the Offering Memorandum prepared by Fulbright in support of the bonds, which would be based largely on the due diligence contained in the first two documents.
2. **Issuing Agency issues the Bonds:** In this case, a duly authorized Banning Financing Authority (the "Issuing Agency") would issue the requisite amount of bonds for the Project, currently projected to be between \$15 million and \$20 million in taxable, non-recourse bonds. As non-recourse Revenue Bonds, the Bond servicing and repayment obligations would be secured solely on the revenues generated by the Project and would therefore be obligations of the Project Developers, not the Issuing Agency. The Bonds would include a six year call option, which would enable the Bond purchaser to be reimbursed for the principal amount after that time, if so desired.
3. **Bonds are Purchased by the EB-5 Limited Partnership:** Unlike many bond offerings, all of the Bonds issued in this case would be purchased by a single entity, the Inland Banning Investor Visa Group I, L.P. (IBIVG-I, LP) which has been formed by IIVG8 as its General Partner. As the Project is currently estimated to cost between \$15 million and \$20 million, IBIVG-I, LP would ultimately have as many as 4 (@ \$500,000 = \$20 million) foreign investors as Limited Partners. The Bonds would be purchased in tranches (e.g., \$1 - 3 mil at a time) over a relatively short period of time as the funds from the foreign investors are secured.
4. **Mechanisms for transferring Bond proceeds to the Project are put in place:** As part of the Bond documentation, a Trustee (a reputable bank, experienced in such matters) would be contracted with to administer the funds through a Bond Indenture with the "Borrower" (JMA Village); this documentation would obligate the Borrower to pay the agreed upon principal and interest on the Bonds to the Trustee who would pass these payments to the Bond holder (IBIVG-I, LP); the Borrowers obligations would be secured by various instruments, including a first trust deed on the Project, insurance and payment and performance bonds.
5. **Bond Proceeds are loaned to the Project:** As funding is received from IBIVG-I, LP, the Trustee would verify that the construction work has been performed and release funds to the Borrower. The Trustee would also collect the monthly P&I payments and transfer them to the Bond holder (IBIVG-I, LP). Interest payment obligations during construction would be funded through Bond proceeds to include capitalized interest during construction; once the Project is constructed, P&I payments would be funded by lease payments from the occupants of the

completed facilities (hotel, restaurants, etc.) to the Project developers who would pass them through to the Trustee.


6. **Principal is refunded to Bond holders after the initial term:** The EB-5 investors would place their funds for six years, starting with the initial release of funds to the Project; during that time, they would receive a nominal portion of the Bond interest payments received by IBIVG-I, LP. At the end of that period, the investors' principal (approximately \$15 million - \$20 million) would be refunded through one or more re-financing options.

The proposed financing program outlined in this staff report would help to create job opportunities in the City, County, and the State and has the potential to generate substantial economic benefits for the community. Staff recommends the City and the Banning Financing Authority move forward with this request by adopting Resolution No. 2012-02 FA (Attachment A).

**FISCAL DATA:**

The Administrative Services Director/Deputy City Manager has discussed this item with our Bond Counsel, Don Hunt, who has confirmed that the City is protected and not at risk by facilitating this request. City staff will be charging IIVG8 a nominal annual administrative fee for administering the process that will also cover any legal fees associated the preparation or review of the documents involved in the process. In addition, City staff is requiring that Don Hunt serve as our Bond Counsel.

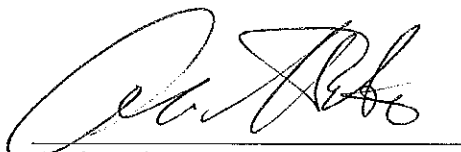
**RECOMMENDED BY:**

  
\_\_\_\_\_  
Bill R. Manis  
Economic Development Director

**REVIEWED BY:**

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

**APPROVED BY:**

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

**Attachment:**

A. Resolution 2012-02 FA

**ATTACHMENT A**  
**RESOLUTION 2012-02 FA**

## RESOLUTION NO 2012-02 FA

### **A RESOLUTION OF THE BANNING FINANCING AUTHORITY CONFIRMING ITS INTENTION TO ISSUE TAXABLE REVENUE BONDS TO BE PURCHASED IN LIMITED OFFERINGS BY A PARTNERSHIP ASSOCIATED WITH EB-5 INVESTORS TO FACILITATE ECONOMIC DEVELOPMENT PROJECTS**

**WHEREAS**, the Banning Financing Authority desires to assist in financing a portion of the cost of construction and equipping of facilities and improvements for economic development projects through the authorization, issuance, sale and delivery of taxable revenue bonds; and

**WHEREAS**, each series of taxable revenue bonds will be secured by the revenues generated by the project financed by such series of taxable revenue bonds; and

**WHEREAS**, the debt service obligations on each series of taxable revenue bonds may be secured by an indenture of trust, a deed of trust or security agreement; and

**WHEREAS**, it is expected that each series of taxable revenue bonds will be placed pursuant to a limited offering to a single entity, an EB-5 limited partnership; and

**WHEREAS**, a trustee will be contracted with to administer funds through an indenture and a loan agreement; and

**WHEREAS**, the proposed financing program will assist in creating job opportunities in the City, the County and the State and has the potential to generate substantial economic benefits for the community.

**NOW, THEREFORE, BE IT RESOLVED**, determined and ordered by the Board of Directors of the Banning Financing Authority as follows:

SECTION 1: Recitals. All the foregoing recitals are true and correct.

SECTION 2: Authorization of Further Acts. The Executive Director, the Finance Director, their respective designees, or any member of the Board (each, a "Responsible Officer"), are hereby authorized and directed, individually and collectively, to prepare or cause to be prepared any and all approximate financing and disclosure documents necessary or desirable to implement the program described in the recitals hereto and to effectuate the purposes of this Resolution.

SECTION 3: The City Clerk shall certify to the adoption of this Resolution.

SECTION 4: This Resolution shall take effect immediately upon its adoption by the Board.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Banning, acting in its capacity as the Banning Financing Authority, this 24<sup>th</sup> day of July 2012.

\_\_\_\_\_  
Don Robinson, Chairman  
City of Banning Financing Authority

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, Secretary  
Banning Financing Authority

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

\_\_\_\_\_  
David J. Aleshire, General Counsel  
Aleshire and Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, Secretary of the City of Banning Financing Authority, do hereby certify that Resolution No. 2012-02 FA was duly adopted by the City Council of the City of Banning, acting in its capacity as the Banning Financing Authority, at a joint meeting held on the 24<sup>th</sup> day of July 2012, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

**CITY OF BANNING  
REPORT OF OFFICERS**

**DATE:** July 24, 2012

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

**FROM:** Bill R. Manis, Economic Development/Redevelopment Director

**SUBJECT:** Amended and Restated Operating Covenant between the City of Banning and Diamond Hills Auto Group, Inc.

**RECOMMENDATION:**

That the City Council:

- (1) Adopt Resolution No. 2012-59 of the City Council of the City of Banning, California, entering into an Economic Development Assistance Program and authorizing an Amended and Restated Operating Covenant with Diamond Hills Auto Group, Inc.

**BACKGROUND:**

In 2005 Diamond Hills Auto Group, Inc. acquired the Banning based Chevrolet franchise formerly known as Sunset Chevrolet/Oldsmobile, Inc. Shortly thereafter Diamond Hills initiated dialogue with the City regarding possible assistance needed to bring the dealership up to a first class auto sales center.

Based on that dialogue in September of 2005, the City of Banning ("City") and Diamond Hills Auto Group Inc. ("Dealer") entered into an Operating Covenant Agreement ("Original Agreement and Attachment 1") whereby the City agreed to:

- Pay the Dealer \$2,000,000 over a ten year period, or until September 2015;
- Extend the Original Agreement by ten years, or until September 2025, and create a new ceiling of \$5,000,000 if the Dealer added a maximum of two new dealer franchises to the existing dealership;
- Pay the Dealer a sliding percentage scale of sales tax as long as the City maintained a minimum threshold of \$200,000 per year in sales tax by the Dealer. The percentage split ranged from 80% in Year 1 and decreased 5% per year until the percentage split was 50% in Year 7.

Since the Original Agreement was established in 2005, the City has shared approximately \$115,000 in sales tax revenue with the Dealer. This total is well below what the Dealer and City original projected mostly due to the economic conditions experienced since 2007. The Dealer received a consistent level of sales tax rebate until the second quarter of 2007. For sixteen quarters the Dealer did not generate enough in sales to qualify for a percentage split in sales tax. In the fourth quarter of 2011, the Dealer finally started to see a small increase in their sales which exceeded the required threshold amount and resulted in a small rebate.

### **ANALYSIS:**

As the economy struggles to recover cities are facing an especially difficult time to attract business and expand business in their respective communities. Add to this equation the recent loss of redevelopment and cities throughout the State are essentially unable to provide financial inducements that have traditionally encouraged private/public partnerships. The effects of the recession have been profound on Banning and communities in the region. Although national unemployment rates are improving slowly, California's job recovery is still a major problem. The May 2012 unemployment rate in California was 11%, while the national unemployment rate was 8.1%. The unemployment rate in Riverside County in May 2012 was 12.8%, while the unemployment rate in Banning was 14.6%, which is 6.5% above the national rate. Economists believe that these unemployment rates are understated, since many individuals are underemployed or have stopped actively searching for jobs.

In light of this situation, the City of Banning recently created and adopted Ordinance 1453 establishing an Economic Development Incentive Program geared towards attracting new businesses and helping existing businesses to expand and flourish in our community. The goal of the new ordinance is to promote public/private partnerships, encourage businesses to grow and expand, retain and create jobs, promote economic growth in the City, enhance community image, and invest in infrastructure improvements.

Ordinance 1453 provides financial assistance to businesses if the business meets specific criteria and provides a significant long-term benefit to the general public. Ordinance 1453 requires the business being considered to meet one or more of five conditions in order to be considered, that includes:

1. Alleviation of Blighting Conditions;
2. Need for Area-Wide Infrastructure;
3. Production of Jobs;
4. Fiscal Impact of City; and
5. Special Amenities.

### **Diamond Hills Auto Group Proposal –**

The Dealer has approached the City to request an amendment to the Original Agreement. The proposed Restated and Amended Operating Covenant ("Amended Agreement and Attachment 2") would provide for following:

- To remove the ceiling of \$2,000,000 and ten years as outlined in the Original Agreement;
- To establish a minimum sales tax threshold of \$25,000 per quarter or \$100,000 per year before the City and the Dealer would split 50% of the sales tax generated over the threshold;
- To establish a seven year term for the Amended Agreement with two option periods each having a seven year time frame potentially adding fourteen additional years to the term. The effective date of the Amended Agreement would go back to January 1, 2012;
- Condition the Dealer to remain in the City of Banning during the term of the Amended Agreement, which includes operating out of their existing location at 4661 W. Ramsey, relocating to a new location within the City, or operating multiple locations within Banning; and



- Condition the Dealer to provide new façade and facility improvements to their existing Banning facility, similar to those recently completed at the Dealer's Upland location. Or to provide improvements to another location in Banning should the Dealer decide to relocate within the City, or to provide improvements to multiple locations in Banning should the Dealer decide to expand their new vehicle footprint in the City.

The Dealer is one of the top sales tax producers in the City and is the only new vehicle dealer in the City. The Dealer sells new Chevrolet, GMC, and Buick vehicles. The Dealer generates an average of 10% of the City's total sales tax revenues in any given year. In addition to being a significant sales tax provider in our community, the Dealer currently has 49 full time employees and 7 part time employees. They are anticipating adding approximately 7 new positions by the end of this year. Since 2005, the Dealer has provided enhancements and improvements to their existing location and has supported numerous non-profits, businesses, and City related events during this time period.

During the last four years there have been multiple General Motors dealers that have closed due to the economy. In our region this includes Chevrolet of San Bernardino, Inland GMC and Buick in San Bernardino, and Kennedy Cadillac in San Bernardino. Chevrolet sales have been down 11% over the last twenty-four months in the Inland Empire due to the depressed housing market and the slowdown of truck and SUV sales. GMC sales are off 27% over the same twenty-four month period while Buick sales are up 4% primarily due to two new products, the Regal and the Torrent. Despite these very challenging statistics, the Dealer has been able to keep their doors open and not consolidate their Banning location to another one of their existing locations outside of our community.

Businesses like the Dealers provide important funding for essential municipal services, such as public safety. The loss of these revenues to the City, due to closure of the business or relocating to another City offering incentives, would have a dramatic impact on Banning's ability to provide municipal services. Retaining and growing a business like the Dealer's is also critical because it would be very difficult to attract and backfill the property and buildings left behind by the Dealer if they were to close their doors here in town. There is a significant vacancy rate for these types of buildings and uses in our region as highlighted by the other dealers who have closed. City staff is very concerned that the loss of our Dealer would only perpetuate the existence of blight in our community.

#### **Economic Development Incentive Program –**

The Dealer is proposing to make an investment of approximately \$1,500,000 at its current location if the City agrees to provide the assistance outlined above. The improvements consist primarily of façade related enhancements that include new exterior lighting, trim fascia pop out details, windows, sign and branding images, stucco, paint, and landscape improvements. Attachment 3 highlights a rendering of the Dealers store in Upland which will be consistent with the proposed enhancements and improvements to the Banning location. The Dealer also has the ability to relocate and open a new auto dealership in Banning in an effort to attract other additional points of sale and expand the new vehicle product base in the City.

Pursuant to the requirements of Ordinance 1453, the Dealer will be providing the improvements outlined in this report to its dealership located at 4661 W. Ramsey Street in Banning within the time period of the Amended Agreement. The projected costs of the improvements are \$1,500,000

which the Dealer will initially finance on its own and then utilize the City sales tax rebate for reimbursement purposes. Because of the economic conditions of the last few years which have resulted in underperforming sales results, the Dealer is not able to justify or afford the proposed improvements. Without public assistance the improvements to the Banning location would not take place and the dealership would not have the ability to expand and potentially add new points of sale to this location.

Due to the nature and scale of the proposed enhancements and improvements they will not create any negative impacts on the properties surrounding the existing dealership. Should the Dealer decide to relocate to a new property all environmental, code, zoning, and other City requirements would need to be satisfied. This would be consistent with any new development taking place in the City.

**FINDINGS:**

The proposed Economic Development Incentive Program will be for a seven year term with two options to extend the term for two years per option and will provide a significant long-term benefit to the community. Section 3.28.090 of Ordinance 1453 requires that an Economic Development Incentive Program only be approved if the project provides a significant long-term benefit to the public generally and the project meets one or more of the following requirements.

**A. The Project will meet one or more of the conditions of Ordinance 1483 by:**

**(i) Alleviation of Blighting Conditions**

The project will avoid creating a blighted condition by retaining and enhancing a use at the existing location where if the property were to become vacant the new owner would find it financially difficult to utilize or renovate the property for other uses. The existing buildings on the site are specifically geared toward an auto dealership use and therefore it would be difficult to market and re-use the property. The proposed project will serve to strengthen Banning's land use and social structure, and will alleviate economic and physical blight within the community by enhancing the property with the proposed improvements. *This condition of the Ordinance is satisfied.*

**(ii) Need for Area-Wide Infrastructure**

The project will not require the Dealer to provide area-wide infrastructure if the Dealer remains on the existing site, only on-site enhancements to the building façade is anticipated. The proposed façade improvements will be similar in scope to the recently completed façade improvements the Dealer completed at their Upland location. Should the Dealer relocate to a new site in Banning, or operate multiple locations in the City, there is a possibility that area-wide infrastructure might be required which would significantly exceed the needs of the project, and where the cost of the infrastructure, in aggregate, may make the project economically unfeasible. At that point in time the City would reevaluate this Section of the Ordinance. *This condition of the Ordinance is not satisfied at this time.*

**(iii) Production of Jobs**

The project is expected to retain 49 full time jobs and 7 part time jobs at the existing site. The Dealer anticipates adding 7 new employees at the existing site by December 2012. Should the Dealer ultimately expand his operations in the community additional jobs would be created as a result. At this time however, the number of

existing jobs and projected jobs does not meet this condition of the Ordinance. ***This condition of the Ordinance is not satisfied.***

**(iv) Fiscal Impact on City**

The project will retain one of Banning's most significant sales tax-generating businesses. The Dealer represents approximately 10% of the City's annual sales tax generation and has maintained their presence in the community despite the economic downturn which substantially impacted the automotive industry over the past four years. The Dealer will continue to provide the City with equivalent revenues for the next seven years and it is projected that the revenues generated by the Dealer will continue to increase as the economy recovers. Should the Dealer ultimately expand its footprint in the City the amount of sales tax generated by their increased presence would directly benefit the City financially. ***This condition of the Ordinance is satisfied.***

**(v) Special Amenities**

The project will continue to be significant to the community's character and quality of life by providing enhanced façade and building improvements along the Ramsey Street corridor. The improvements increase property values in the community and encourage surrounding property owners to maintain and improve their properties. The project avoids the Dealer being lured to a surrounding community and potential destructive competition between Banning and another community causing Banning to potentially lose a significant point of sale. The project is vital and in the best interest of the City and will serve the health, safety, and general welfare of the citizens of Banning and the region. ***This condition of the Ordinance is satisfied.***

**B. The Project will produce unique public or private facilities not otherwise existing in the community and which would be significant to the community character and quality of life.**

- (i) The City and the Dealer believe that it is in the public interest to retain the operations of the Dealership in the City for the following reasons:
  - a. The Dealer is the only new vehicle Dealership in the City, thus it provides a unique service that is not fulfilled by any other business in the City;
  - b. The Dealer generates an average of 10% of the City's total sales tax revenues in any given year and is thus one of the City's most significant tax-generating businesses;
  - c. The Dealer currently has forty-nine (49) full time employees and seven (7) part time employees, and the Dealer is anticipating adding approximately seven (7) new positions by the end of 2012;
  - d. Since 2005, the Dealer has provided enhancements and improvements to its existing location and has supported numerous non-profits, businesses, and City-related events during this time period; and
  - e. If the Dealer were to relocate outside of the City, it would leave a vacant property that would be very difficult to utilize and backfill with another use.

**C. The Project has received all other discretionary entitlements required under the Zoning Ordinance, including any environmental review required by the California Environmental Quality Act ("CEQA").**

- a. The Project includes façade related enhancements that consist primarily of new exterior remodeling, lights, trim, fascia pop out details, windows, signage and branding images, stucco, paint, and landscaping. The improvements will be consistent with the recent improvements the Dealer completed at their Upland location. Due to the nature of the subject improvements the CEQA process is not required. Should the Dealer expand or relocate to another property within the City, the appropriate CEQA process would be required as a condition of development.

**D. The Project will not have an adverse effect on surrounding properties or the permitted uses thereof.**

- a. The proposed Dealer enhancements and improvements will not have a substantial adverse impact on traffic, or on surrounding properties, or on the community generally. The proposed enhancements and improvements are all on-site.

**E. The Economic Development Agreement contains provisions to assure the continued operation of the Project consistent with the Chapter and providing for the enforcement of the covenants contained therein by the City.**

- a. The Agreement contains provisions to assure the continued operation of the Project consistent with Chapter 3.28 and providing for the enforcement of the covenants contained therein by the City. The Agreement obtains for the Dealer a commitment to its continued operation in the City for at least the next seven years, with two possible two-year options to extend. Breach of that commitment affects a legally-enforceable default of the City's Agreement with the Dealer.

Based on the information and analysis outlined in this report, staff recommends that the City Council adopt Resolution 2012-59 of the City Council of the City of Banning, California, entering into an Economic Development Assistance Program and authorizing an Amended and Restated Operating Covenant with Diamond Hills Auto Group, Inc. The Amended and Restated Operating Covenant has a seven year term with two options periods of seven years each and a 50% share in sales tax received over the recommended threshold as part of the Economic Development Incentive Program (Attachment 4).

**FISCAL DATA:**

The Dealer currently meets the threshold amount of \$100,000 per year in sales tax generation. The City currently shares 50% of the excess above the threshold with the Dealer under the terms of the Original Agreement which expires in September 2015. The Amended and Restated Agreement would create a new term from January 1, 2012 to December 31, 2018 with two option periods of seven years each. The City and Dealer anticipate both parties will receive an increase in the annual sales tax they receive due to the expansion and growth of the Dealer.

**RECOMMENDED BY:**

Bill R. Manis

Bill R. Manis  
Economic Development Director

**REVIEWED BY:**

Jane Overholt by [signature]  
Jane Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

[signature]

Andy Takata  
City Manager

**Attachments:**

1. Original Operating Covenant Agreement
2. Amended and Restated Operating Covenant Agreement
3. Dealer Enhancements & Improvements Rendering
4. Resolution 2012-59

**ATTACHMENT 1**  
**ORIGINAL OPERATING COVENANT AGREEMENT**

*Imaged  
Date:*

COPY

**AGREEMENT REGARDING OPERATING COVENANT**

**between**

**THE CITY OF BANNING,**

**a municipal corporation**

**and**

**DIAMOND HILLS AUTO GROUP, INC.,**

**a California corporation**

**[Dated as of September 27, 2005 for reference purposes only]**

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# **AGREEMENT FOR PURCHASE OF OPERATING COVENANT AND OPERATING COVENANT**

## **1. PARTIES AND EFFECTIVE DATE.**

This Agreement for Purchase of Operating Covenant and Operating Covenant ("Agreement") is entered into between (i) the City of Banning ("Banning"), a municipal corporation, and (ii) Diamond Hills Auto Group, Inc. ("Dealership"), a California corporation.

This Agreement will not become effective until the date ("Effective Date") on which this Agreement (i) has been duly executed by the authorized officers of the Dealership and delivered to Banning, (ii) has been duly approved by the City Council of the City of Banning, and (iii) has been duly executed by the appropriate officers of Banning and delivered to the Dealership.

## **2. RECITALS AND REPRESENTATIONS.**

**2.1** The Dealership represents and warrants to the City that it has the legal right to use and occupy that certain real property (the "Property") located within the City of Banning, and commonly known as 4661 W. Ramsey Street, Banning, California. A legal description of the Property is attached as Exhibit A. A map showing the location of the Property is attached as Exhibit B.

**2.2** The Dealership represents and warrants to the City that, pursuant to a management agreement its affiliate, Mark Christopher Chevrolet, Inc., a Delaware Corporation ("Manager"), is operator of the "Existing Facility" (hereinafter defined) located on the Property and that it has an option to purchase said parcel from its current owner, Sunset Chevrolet/Oldsmobile, Inc., a California Corporation and Frank Coletto. A copy of the Management Agreement is attached hereto as Exhibit C.

**2.3** Banning recognizes that the long-term operation of the Existing Facility, will result in significant municipal benefits to Banning and its citizens, including, without limitation, the creation of significant new numbers of employment opportunities, property tax revenues, sales tax revenues, and other ancillary benefits. Accordingly, Banning finds and determines that its entry into this Agreement and its purchase of the Operating Covenant (herein defined) serve a significant public purpose, while providing only incidental benefits to a private party.

## **3. TERMS.**

**3.1 Definitions.** In addition to the defined terms set forth in various sections of this Agreement, the following terms shall have the following meanings:

**3.1.1 Base Amount.** The "Base Amount" means the amount of Sales Tax Revenue the City must receive during each Computation Period and/or Computation



Year before the City is required to make a Covenant Payment to Dealership. For the purposes of this Agreement the Base Amount for each Computation Period shall be Fifty Thousand Dollars and No Cents and the Base Amount for each Computation Year shall be Two Hundred Thousand Dollars and No Cents (\$200,000.00).

**3.1.2 Commencement Date:** "Commencement Date" means the first day of the full month following the Effective Date of this Agreement.

**3.1.3 Computation Period:** "Computation Period" shall mean each continuous three (3) month period during the Eligibility Period. There will be a total of forty (40) Computation Periods within the Eligibility Period. As an example, if the Commencement Date is October 1, 2005, then the first Computation Period shall be that three (3) calendar Month period commencing on October 1, 2005, and ending December 31, 2005. The second Computation Period shall commence January 1, 2006, and end March 31, 2006, and so on.

**3.1.4 Computation Year:** "Computation Year" shall mean four (4) immediately successive Computation Periods. There shall be a total of ten (10) Computation Years within the Eligibility Period. As an example, if the Commencement Date is October 1, 2005, then the first Computation Year shall commence October 1, 2005, and end September 30, 2006. The second Computation Year shall commence October 1, 2006, and end September 30, 2007, and so on.

**3.1.5 Covenant Payments:** "Covenant Payments" means those contingent payments made by Banning to Dealership pursuant to Section 3.3 of this Agreement for the purchase of the Operating Covenant described in Section 3.2 of this Agreement.

**3.1.6 Dealership Activities:** "Dealership Activities" means the commercially reasonable business practices and activities associated with conducting an automobile dealership, including, but not limited to, the selling, leasing, rental, purchasing, transporting, servicing, repairing, and detailing of new and used motor vehicles, including, but not limited to, automobiles, trucks, and any other motorized vehicle, and all other related activities conducted directly by Dealership, concessionaires, or lessees thereof.

**3.1.7 Eligibility Period:** "Eligibility Period" means the period commencing on the Commencement Date and ending ten (10) years thereafter (subject to extension as hereinafter provided and unless terminated sooner pursuant to specific provisions of this Agreement).

**3.1.8 Existing Facility:** As used in this Agreement, "Existing Facility" shall mean the existing Chevrolet/Oldsmobile automobile dealership and the physical structures, fixtures, landscaping, and all other improvements appurtenant thereto, located on Parcel 1.

**3.1.9 Sales Tax Revenue:** "Sales Tax Revenue" means that portion of taxes derived and received by Banning from the imposition of the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code Section 7200, et seq.), as it currently exists and as it may be from time to time, amended, repealed and reenacted, renamed, and/or otherwise modified, arising from Dealership Activities conducted at the Existing Facility on the Property. Actual Sales Tax Revenue for each fiscal year shall be determined based upon the final audited sales tax figures released for such fiscal year by the State of California.

**3.2 Operating Covenant.** The Dealership covenants and agrees for itself and all voluntary and involuntary successors and assigns to, that, for a period of ten (10) years following the Commencement Date (subject to extension as hereinafter provided and unless terminated sooner pursuant to specific provision of this Agreement), the Dealership shall operate, or cause to be operated, upon the Property the entirety of the Existing Facility in a commercially reasonable business manner, consistent with all applicable provisions of Federal, State and local laws and regulations. The Dealership Activities shall be conducted on the Property from the Existing Facility. Subject to Section 3.1.5, the Existing Facility shall be operated in accordance with the reasonable and customary automobile dealership practices in the surrounding communities. The Dealership or successor will operate and maintain the Existing Facility in a commercially reasonable and prudent manner, with the objective of being regarded as a first class auto sales center and to generate the greatest feasible amount of Sales Tax Revenue. The Dealership's obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to advertise, market and promote the Existing Facility in a commercially reasonable fashion, once again consistent with the objective of maximizing the amount of Sales Tax Revenue.

For the term of this Operating Covenant, the Property shall be designated as the situs of all sales resulting from the Dealership Activities, and the Property shall be used only for the purposes of the operation of the Existing Facility in accordance with this Agreement, or for the operation of substitute automobile dealership facilities acceptable to Banning in its reasonable discretion.

Dealership, in the normal course of its business as it produces promotional, sales, advertising, marketing, packaging, and other such materials relating to its Dealership Activities and the Existing Facility shall ensure that such materials prominently display and identify the City of Banning as a major center of Dealership's sales and operations.

City and its Redevelopment Agency are hereby given license by Dealership to use the name, likeness, or other description of Dealership and/or the Existing Facility in City or Agency marketing, promotional, or information material prepared for or used by the City and/or Agency. City and/or Agency shall provide Dealership with a reasonable opportunity to review and comment upon any such materials utilizing Dealership's name, likeness or other description. The use of any trademark or servicemark shall be subject to

the standards and or requirements associated with the use of such trademark or servicemark.

### **3.3 Payment for Operating Covenant Contingent Upon Occurrence of Certain Conditions**

**3.3.1 Statement of Agreement.** This paragraph sets forth the parties' agreement with respect to Banning's acquisition of the Operating Covenant set forth in Section 3.2. The consideration to be paid to the Dealership in exchange for the Operating Covenant shall consist of Banning's payment to the Dealership, during a ten (10) year period commencing on the Commencement Date and ending on \_\_\_\_\_, 2015, subject to extension as hereinafter provided, of an amount equal to:

- Eighty percent (80%) of Sales Tax Revenue in excess of the Base Amount during the first year of this Agreement.
- Seventy Five percent (75%) of Sales Tax Revenue in excess of the Base Amount during the second year of this Agreement.
- Seventy percent (70%) of Sales Tax Revenue in excess of the Base Amount during the third year of this Agreement.
- Sixty Five percent (65%) of Sales Tax Revenue in excess of the Base Amount during the fourth year of this Agreement.
- Sixty percent (60%) of Sales Tax Revenue in excess of the Base Amount during the fifth year of this Agreement.
- Fifty Five percent (55%) of Sales Tax Revenue in excess of the Base Amount during the sixth year of this Agreement.
- Fifty percent (50%) of Sales Tax Revenue in excess of the Base Amount during the seventh year through the end of this Agreement.

The above described payments are hereinafter referred to as the "Banning Payments to Dealership".

Provided however that the maximum total payments to Dealership under this section 3.3.1 shall be Two Million Dollars (\$2,000,000) ("Maximum Total Payments"), subject to increase as hereinafter provided in Section 4.2. Further provided that if the Maximum Total Payments have not been reached upon the expiration of the ten (10) year term, subject to extension as provided in Section 4.2, then this section and this Agreement shall be automatically extended on a calendar quarter by calendar quarter basis until such time as the Maximum Total Payments have been made.

It is expressly agreed that Banning's obligations under this Section 3.3 are contingent on a year-to-year basis and, for each Computation Year, Banning's obligations to make any payments hereunder are expressly contingent upon the satisfaction of the following conditions precedent in each such Computation Year: (i) Dealership having, for the entirety of such Computation Year, completely fulfilled its material obligations under this Agreement, including, without limitation, the Operating Covenant; and (ii) Dealership having generated in such Computation Year Sales Tax Revenues of no less than the Base

Amount. Should either one of the foregoing conditions precedent not be satisfied for each Computation Year, then Banning shall have no obligation under this Section 3.3 to make any payments to Dealership in such Computation Year. In any action or proceeding brought by either party to interpret or enforce the provisions of this Section 3.3, the trier of fact in such action or proceeding may refer to this paragraph to ascertain and give effect to the intention of the parties hereto.

For purposes of this Section 3.3, Banning will be deemed to have "made" a Quarterly Payment (hereinafter defined) or Adjustment Payment (hereinafter defined) to Dealership if Banning either (i) makes a cash payment to Dealership as provided in Section 3.3.3 or 3.3.4, or (ii) applies any amount due to Dealership under this Section 3.3 to reduce the amount of any then-existing Sales Tax Deficit (hereinafter defined) as provided in Section 3.3.4.

**3.3.2 Quarterly Payments.** Within thirty (30) days following the end of each of the first three (3) Computation Periods during each Computation Year, Dealership shall submit to Banning a certified copy of its report to the State of California Board of Equalization ("BOE") which sets forth the amount of sales tax paid to the BOE during that Computation Period arising from Dealership Activities conducted at the Existing Facility on the Property. Within twenty (20) days from the Dealership's submission of the aforementioned report, Banning shall determine the amount of Sales Tax Revenue for the subject Computation Period. Within twenty (20) days following Banning's determination of the Sales Tax Revenue for the subject Computation Period, contingent upon Banning's determination that the Dealership generated no less than One Quarter (1/4) of the Base Amount in Sales Tax Revenue for that Computation Period, Banning shall pay to Dealership an amount equal to Banning Payments to Dealership of the Sales Tax Revenue generated during the subject Computation Period which is in excess of the sum of One Quarter (1/4) of the Base Amount ("Quarterly Payment"). The fourth Computation Period of each Computation Year shall be used as an adjustment period as described in the immediately following Section 3.3.4.

**3.3.3 Year End Adjustments.** Within one hundred twenty (120) days following the end of each Computation Year, Banning will determine, based upon information furnished by Dealership and from the BOE, whether Dealership has generated a minimum of the Base Amount in Sales Tax Revenue for that Computation Year. Contingent upon Banning's determination that the Sales Tax Revenues generated during the subject Computation Year are equal to or greater the Base Amount, then Banning will then determine an amount ("Computation Year Compensation") which will be equal to Banning Payments to Dealership of the Sales Tax Revenues in excess of the Base Amount for the subject Computation Year.

If the Computation Year Compensation is equal to the total amount of the Quarterly Payments made by Banning to Dealership during the subject Computation Year, then no adjustment shall be necessary.

If the Computation Year Compensation is greater than the total amount of any Quarterly Payments made by Banning to Dealership during that Computation Year, then, within one hundred and sixty (160) days following the end of the Computation Year, Banning shall pay to Dealership an amount ("Adjustment Payment") equal to the difference between the Computation Year Compensation and the total amount of any Quarterly Payments made by Banning to Dealership during that Computation Year. If the Computation Year Compensation is less than the total amount of any Quarterly Payments made by Banning to Dealership during that Computation Year, then the difference between the Computation Year Compensation and the total of any Quarterly Payments made by Banning to Dealership during that Computation Year shall be an obligation of, Dealership to Banning. Such obligation shall be hereinafter referred to as the "Sales Tax Deficit."

Sales Tax Deficits may be aggregated and carried over from Computation Year to Computation Year. The term "Sales Tax Deficit" means the aggregate of any Sales Tax Deficit generated in the subject Computation Year and any Sales Tax Deficit carried over from a previous Computation Year or Years.

Sales Tax Deficits shall be applied to offset any Quarterly Payment or Adjustment Payment which Banning may owe to Dealership in any subsequent Computation Period or Computation Year, i.e., any amounts which Banning may owe Dealership pursuant to provisions of this Section 3.3 in any Computation Period shall be first credited to reduce the amount of any then-existing Sales Tax Deficit, and, once that Sales Tax Deficit has been eliminated, Banning shall again commence making Quarterly Payments or Adjustment Payments to Dealership if and as warranted in future Computation Periods or Computation Years.

**3.3.4 Payment of Sales Tax Deficit or Accrued Payment Upon Expiration or Termination of this Agreement.** If, at the end of the Eligibility Period, there is a Sales Tax Deficit, then Dealership shall pay the amount of such Sales Tax Deficit to Banning within thirty (30) days from the end of such Eligibility Period. Furthermore, if this Agreement is terminated by Banning as provided in Section 7.1, then the Dealership shall, within thirty (30) days from such termination, pay to Banning the amount of any then existing Sales Tax Deficit.

If this Agreement is terminated by Banning as provided in Section 7.1, then, at the end of the Computation Year in which the termination occurred, Banning shall pay to Dealership any amounts due to Dealership pursuant to the provisions of Section 3.3.4.

**3.3.5 Contingent Obligation.** Banning's obligation to make the payments hereinabove described is expressly subject to the provisions of Sections 3.4 and 7.1 of this Agreement.

**3.4 Abatement of Payment Obligation.** Banning's obligation to make the Covenant Payments, if and as warranted by Section 3.3, shall be abated, excused and discharged during a period in which any of the events described in (i), (ii) and (iii) below ("Default") exist; provided, however, that Banning shall first provide written notice to Dealership of such Default, and Dealership shall have thirty (30) days from the date of such notice to either cure such Default, or, if such Default cannot be reasonably cured during such thirty (30) day period, to commence such cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

If Dealership fails to cure, or commence to cure, as provided in the immediately preceding paragraph, then Banning's obligations to make any Covenant Payments, if and as warranted by the provisions of Section 3.3, shall be abated and forever forgiven, discharged and excused for all periods of time during which the Default continues to exist ("Abatement Period"). If, however, Dealership cures, or commences to cure, such Default as provided in the preceding paragraph, Banning shall continue to make such Covenant Payments if and as warranted by Section 3.3. Furthermore, if Banning's obligation to make Covenant Payments is abated, forgiven, discharged and excused by reason of Dealership's failure to cure or commence such cure within said thirty (30) day period, Banning's obligations shall nonetheless be reinstated, and Banning shall make Covenant Payments if and as warranted by said Section 3.3, upon Dealership's cure of the default; provided, however, that any Sales Tax Revenues generated during the Abatement Period shall not be considered in determining whether Banning is obligated to make Covenant Payments pursuant to Section 3.3.

For purposes of this Section 3.4, the term "Default" means the following:

- (i) Dealership fails to strictly abide by any material provision of this Agreement, including, without limitation, the Operating Covenant;
- (ii) Dealership fails to make any reasonable improvements, repairs or other alterations to the Existing Facility, at Dealership's sole cost, expense and liability, that may be required pursuant to any applicable Federal, State or local ordinances and regulations; or
- (iii) Dealership fails to maintain the Existing Facility as a first class auto sales center; or
- (iv) Dealership fails to maintain the appropriate master sales permits for the sale and resale of automobiles, trucks, and other motor vehicles from the Existing Facility; and
- (v) Dealership fails to designate Banning as the point of sale on all sales tax returns to the State of California and in all sales and lease contracts or other transactions related to Dealership Activities conducted at the Existing Facility.

#### **4. New Franchise/ Dealer Points.**

##### **4.1 Definitions.**

**4.1.1. "New Franchise"** means any new franchise entered into by Dealership for the purpose of selling motor vehicles, including but not limited to Medium Duty Truck Franchise, Commercial Truck Franchise, within the City of Banning.

**4.1.2 "Dealer Points"** means the addition of any line of motor vehicles to an existing franchise such as but not limited to Cadillac, Hummer, Saab and/or Saturn.

**4.2 Extension of Term/ Revisions.** The Term of this Agreement may be extended up to a maximum of ten (10) years as provided herein. For each New Franchise or Dealer Points, up to a maximum of two (2), for which Dealership will conduct Dealership Activities on the Property, the Term of the Agreement shall be extended for an additional period of five (5) years. In such event, the Covenant Payments made by Banning to Dealership shall be revised in accordance with the following:

**4.2.1 Revision to Covenant Payments.** For each New Franchise or Dealer Points, up to a maximum of two (2), Banning shall increase the amount of Covenant Payments to Dealership by an amount equal to fifty percent (50%) of the Sale Tax Revenue generated by such New Franchise or Dealer Points and received by the City. Notwithstanding the foregoing, Covenant Payments shall be paid and computed as provided in Section 3.3 of this Agreement.

**4.2.2 Revision to Maximum Total Payments.** For each New Franchise or Dealer Points, up to a maximum of two (2), the Maximum Total Payments that may be made by Banning to Dealership under this Agreement shall be increased by One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00). The Maximum Total Payments shall not at any time exceed Five Million Dollars and No Cents(\$5,000,000.00).

**4.2.3 Commencement of Extension Terms.** Each extension shall commence upon the beginning of sales either of the New Franchise or of the Dealership Points, provided that if that date is other than the start of a Calendar Quarter then the amounts attributable to that partial quarter shall be prorated to reflect the number of days remaining in that Calendar Quarter.

#### **5. TRANSFER OF AGREEMENT.**

Dealership may at its option transfer this Agreement to any site or sites within the City of Banning Redevelopment Project Area or any site within the City Limits designated as "Auto Mall" or "Automotive Sales & Service Land Use/Zoning." Without limiting the foregoing, it is the understanding that this Agreement may cover multiple sites of Dealership within the City of Banning.

## 6. FURTHER ASSISTANCE

Unless otherwise agreed by the parties, Dealership acknowledges that its commitment not to seek "Further Assistance" as defined herein, from the City, its Redevelopment Agency, or its Public Utilities (collectively "City") for the Franchises and/or Dealership Points addressed herein is a material inducement for the City entering into this Agreement and constitutes part of the consideration received by the City under this Agreement. As such, Dealership covenants and agrees that it will not seek Further Assistance from the City during the Term of this Agreement for the Franchises and / or Dealership Points addressed herein. For the purposes of this Section, "Further Assistance" shall mean any:

- (i) direct or indirect monetary payments, offsets, reimbursements or other assistance provided to Dealership, as defined herein;
- (ii) waiver, deferment, or payment of any City fees or charges attributable to Dealership;
- (iii) waiver or deferment of any condition of approval requiring installation of public improvements, or the City's funding of such public improvements, related to the Site of other real property upon which Dealership is operating or intends to operate;
- (iv) this Section shall not be construed as to prohibit, the City providing the assistance described under this Agreement, or the City complying with a request by Dealership for expedited permit processing and other land use planning and land assembly services.

For the purpose of this Section "Dealership" shall mean the Dealership described in this Agreement, any New Franchise, Dealer Points, or other dealership, to be added to the Property under this Agreement, and any entity in which the principals of Dealership own a controlling interest.

## 7. GENERAL PROVISIONS

**7.1 Termination.** Banning may, in its sole and absolute discretion, terminate this Agreement, without cost, expense, or liability if:

- (i) Upon the final determination by a court of competent jurisdiction that the Operating Covenant is void, voidable, invalid or unenforceable for any reason whatsoever, including, without limitation; legal infirmity or the foreclosure of a senior security or other interest in the Property.

**7.2 Tax Consequences.** Dealership acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.



**7.3 Rights Not Granted Under Agreement.** This Agreement is not, and shall not be construed to be, a Development Agreement under Government Code Section 65864 et seq., or a Disposition and Development Agreement under Health and Safety Code Section 33000 et seq. This Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by Banning concerning any Existing Facility, project, development, or other construction by Dealership in the City of Banning. This Agreement does not, and shall not be construed to, exempt Dealership in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance, operation, or otherwise of any Existing Facility, project, development or other construction within the City of Banning. This Agreement does not, and shall not be construed to, exempt Dealership from the application and/or exercise of Banning's power of eminent domain, or its police power including, but not limited to, the regulation of land uses, and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

**7.4 Joint Defense of Third Party Attack Upon Agreement.** If any third party should commence any action or proceeding to set aside, annul, void or attack this Agreement or any provisions hereof, Dealership and Banning agree to reasonably and mutually cooperate in the defense of such action or proceeding. The parties shall select mutually acceptable legal counsel to jointly represent them and shall share equally the expense of such legal counsel and litigation costs.

**7.5 Consent.** Whenever consent or approval of any party is required under this Agreement, that party shall not unreasonably withhold such consent or approval unless otherwise allowed by specific provision of this Agreement.

**7.6 Governing Law and Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California, without regard to its conflicts of laws principles. Any action or proceeding commenced to interpret, enforce, or which is in any way related to this Agreement, including, without limitation, the Operating Covenant, shall be commenced and prosecuted in the appropriate court in the County of Riverside, California. Each party hereby irrevocably consents to the personal jurisdiction of the court in such matter. Each party hereby irrevocably waives, to the maximum legal extent, the benefit of any provision of law providing for change of venue to any other court or jurisdiction for any reason whatsoever, including, without limitation, any diversity of citizenship between Dealership and Banning, or the fact that Banning is a party to this Agreement. Without limiting the generality of the foregoing,

**7.7 Notices.** Any notice, demand, request, consent, approval or communication that any party desires or is required to give to any other party under this Agreement shall be in writing and either served personally or sent by regular mail and shall be addressed to such party at the addresses set forth below. Any party may change its address by notifying the other parties of the change of address.

Dealership's address: Diamond Hills Auto Group, Inc.  
Attn: Warren Fagerstrom  
4661 W Ramsey Street  
Banning, CA 92220

With a copy to: Shulman Hodges & Bastian LLP  
Attn: Ronald S. Hodges  
26632 Towne Centre Drive  
Suite 300  
Foothill Ranch, CA 92610

Banning's address: City of Banning  
Office of the City Manager, Randy Anstine  
City Hall  
99 East Ramsey Street  
Banning, California 92220

With a copy to: Burke, Williams & Sorensen, LLP  
Attn: Banning City Attorney  
3403 Tenth Street, Suite 300  
Riverside, Ca. 92501  
Fax: (951) 788-5785

**7.8 Amendment or Modification.** No amendment, change, modification, alteration or termination of this Agreement shall be made except pursuant to written instrument signed by Dealership and Banning. The City Manager is authorized to make minor, non-substantive changes to this Agreement on behalf of Banning without the need for formal City Council approval.

**7.9 Assignment.** Dealership may not assign this Agreement in whole or in part without the prior written consent of Banning, which consent may not be unreasonably withheld or delayed. In deciding whether to grant such consent, Banning may consider the experience and qualifications of the proposed assignee, including, without limitation, the following: the experience of the proposed assignee in owning and/or operating an automobile dealership similar to the Existing Facility, and the financial strength and stability of the proposed assignee, as it relates to the proposed assignee's ability to operate the Existing Facility in accordance with the requirements of this Agreement. Banning hereby consents to the assignment of this Agreement to an entity owned and controlled by the principals of Dealership.

**7.10 Entire Agreement; Good Faith Negotiations.** This Agreement contains all of the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

The parties acknowledge that this Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement. In any action or proceeding to interpret and/or enforce this Agreement, the trier of fact may refer to extrinsic evidence not in direct conflict with any specific provision of this Agreement to ascertain and give effect to the intent of the parties hereto.

**7.11 No Third Party Beneficiaries.** This Agreement is intended to and shall benefit only Banning, the Dealership, and their permitted successors and assigns. No person or entity not a party to this Agreement is intended to, nor shall it be, benefited by either Banning's or the Dealership's performance of their respective obligations under this Agreement. No person or entity not a party to this Agreement shall have any rights or causes of action against either Banning or the Dealership as a result of either Banning or the Dealership's performance or nonperformance under this Agreement.

**7.12 Time of the Essence; Force Majeure.** Time is of the essence in the performance of the parties' obligations under this Agreement. However, no party shall be in default hereunder due to the delay in that party's performance if such delay is due to events beyond the reasonable control and influence of the party claimed to be in default, which events include, without limitation, flood, fire, earthquake, quarantine, freight embargo, acts of God, strikes, riots, walkouts, defaults of the other party, third-party litigation or appeal of any decision regarding the approval of plans and specifications for the Facility (collectively, "Excusable Delay"); provided, however, that the inability of Dealership to obtain and/or maintain financing for the construction of the New Facility shall not be deemed to be an Excusable Delay.

The foregoing notwithstanding, Dealership expressly agrees that adverse changes in economic conditions, either of Dealership specifically or the economy generally, or changes in market conditions or demands, shall not operate to excuse or delay the performance of each and every of the Dealership's obligations and covenants arising under this Agreement. Dealership expressly assumes the risk of such adverse economic or market changes or conditions, whether foreseeable or not at the time of the Dealership's entry into this Agreement.

**7.13 Attorneys Fees.** In the event that either party to this Agreement brings an action or proceeding against the other to interpret or enforce this Agreement, or which in any way arises out of or as a result of the existence of this Agreement, the prevailing party in that action or proceeding, in addition to all other relief to which it may be entitled, shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorneys fees and costs of litigation. Recoverable costs and expenses include those incurred on appeal and in the enforcement of any judgment.

SIGNATURES ON THE FOLLOWING PAGE

**DEALERSHIP**

**Diamond Hills Auto Group, Inc.,  
A California corporation**

Date: September \_\_\_\_, 2005 By: Christopher M. Leggio  
Christopher Leggio, Vice President

By: Loretta Holtz  
Loretta Holtz, Secretary/Treasurer

**CITY OF BANNING**

Date: September 29, 2005

By: John Machisic  
John Machisic, Mayor

**ATTEST:**

Marie Calderon  
Marie Calderon, City Clerk

**APPROVED AS TO FORM FOR THE CITY OF BANNING:**

September 27, 2005

[Signature]  
City Attorney

**APPROVED AS TO FORM FOR Diamond Hills Auto Group, Inc:**

**SHULMAN HODGES & BASTIAN LLP**

Date: September \_\_\_\_, 2005

By: Ronald S. Hodges  
Ronald S. Hodges

**EXHIBIT A TO AGREEMENT FOR PURCHASE OF  
OPERATING COVENANT AND OPERATING COVENANT**

Legal Description of the Property

## Exhibit "A"

LOT 4 AND THE WEST HALF OF LOT 5 OF THE GINZEL-MONTGOMERY TRACT, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE(S) 64 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

ALSO THAT PORTION OF LOT 3 OF THE GINZEL-MONTGOMERY TRACT, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE 64 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 5, 590.5 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 5;  
THENCE WESTERLY, ON THE SOUTHERLY LINE OF LOT 3, 980.8 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF LOT 1;  
THENCE NORTHERLY ON THE WESTERLY LINE OF SAID LOT 3, 100 FEET;  
THENCE AT A RIGHT ANGLE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, 880.8 FEET;  
THENCE SOUTHEASTERLY, TO THE POINT OF BEGINNING;

EXCEPT FROM LOT 4 AND THE WEST HALF OF LOT 5, THE PORTION ALONG THE SOUTH LINE THEREOF INCLUDED IN A DEED TO RIVERSIDE COUNTY, RECORDED JANUARY 2, 1915 IN BOOK 406 PAGE(S) 67 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPT FROM SAID LOT 4 AND 5 THE PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED MAY 29, 1940 IN BOOK 463 PAGE 507 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPT FROM SAID LOT 4 THAT PORTION CONVEYED TO THE BANNING WATER COMPANY, A CORPORATION, BY DEED RECORDED JUNE 25, 1951 IN BOOK 1282 PAGE(S) 177 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS;



1999-530767  
12-06-1998 10:00 AM  
11 of 12

Sunset Chw.  
+ Miller Bros.

Order Number: O-SA-1757686 (03)

Page Number: 9

### LEGAL DESCRIPTION

Real property in the City of Banning, County of Riverside, State of California, described as follows:

#### PARCEL 1:

LOT 4 AND THE WEST HALF OF LOT 5 OF THE GINZEL-MONTGOMERY TRACT, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE (S) 64 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

ALSO THAT PORTION OF LOT 3 OF THE GINZEL-MONTGOMERY TRACT, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE 64 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 5, 590.5 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 5;  
THENCE WESTERLY, ON THE SOUTHERLY LINE OF LOT 3, 980.8 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF LOT 3;  
THENCE NORTHERLY ON THE WESTERLY LINE OF SAID LOT 3, 100 FEET;  
THENCE AT A RIGHT ANGLE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, 880.8 FEET;  
THENCE SOUTHEASTERLY, TO THE POINT OF BEGINNING;

EXCEPT FROM LOT 4 AND THE WEST HALF OF LOT 5, THE PORTION ALONG THE SOUTH LINE THEREOF INCLUDED IN A DEED TO RIVERSIDE COUNTY, RECORDED JANUARY 2, 1915 IN BOOK 406 PAGE (S) 67 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPT FROM SAID LOT 4 AND 5 THE PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED MAY 29, 1940 IN BOOK 463 PAGE 507 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPT FROM SAID LOT 4 THAT PORTION CONVEYED TO THE BANNING WATER COMPANY, A CORPORATION, BY DEED RECORDED JUNE 25, 1951 IN BOOK 1282 PAGE (S) 177 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT DISTANT NORTH 89° 34' EAST, 30 FEET FROM A POINT IN THE WEST LINE OF SAID LOT 4 FROM WHICH SAID POINT THE NORTHWEST CORNER OF SAID LOT 4 FROM WHICH SAID POINT THE NORTHWEST CORNER OF SAID LOT 4 BEARS NORTH 0° 4' WEST, 50 FEET;  
THENCE NORTH 29° 34' EAST, PARALLEL WITH THE NORTH LINE OF SAID LOT, 100 FEET;  
THENCE SOUTH 0° 46' EAST, PARALLEL WITH SAID WEST LINE OF SAID LOT, 100 FEET;  
THENCE SOUTH 89° 34' WEST, PARALLEL WITH SAID NORTH LINE OF SAID LOT, 100 FEET;  
THENCE NORTH 0° 46' WEST, PARALLEL WITH SAID WEST LINE OF SAID LOT, 100 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPT THAT PORTION OF LOTS 3, 4 AND 5 OF THE GINZEL-MONTGOMERY TRACT, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE (S) 64 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 5, DISTANT THEREON SOUTH 89° 35' 15" WEST, 428.47 FEET FROM THE NORTHEAST CORNER THEREOF;  
THENCE CONTINUING SOUTH 89° 35' 15" WEST, 162.03 FEET ON SAID NORTH LINE TO AN ANGLE POINT IN THE NORTH LINE OF THAT CERTAIN PARCEL DESCRIBED IN DEED TO BRUCE GILCHRIST CHEVROLET COMPANY, INCORPORATED, RECORDED JANUARY 27, 1966 AS INSTRUMENT NO. 9793, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;  
THENCE NORTH 44° 48' 11" WEST, 139.94 FEET ON SAID NORTH LINE TO AN ANGLE POINT;  
THENCE SOUTH 89° 35' 15" WEST, 335.89 FEET ON SAID NORTH LINE;  
THENCE SOUTH 00° 45' 53" EAST, 462.55 FEET TO A POINT ON THE NORTHERLY LINE OF RAMSEY STREET, DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED MAY 29, 1940 AS INSTRUMENT NO. 2192 IN BOOK 463 PAGE (S) 507 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;  
THENCE SOUTH 88° 41' 04" EAST, (RECORD SOUTH 88° 05' 30" EAST) ON SAID NORTHERLY LINE, 595.55 FEET;  
THENCE NORTH 00° 45' 36" WEST, 380.51 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF BANNING BY GRANT DEED RECORDED APRIL 5, 1971 AS INSTRUMENT NO. 34454 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN 537-100-032-1 AND 537-261-043-9

PARCEL 2:

THAT PORTION OF LOTS 3, 4 AND 5 OF THE GINZEL-MONTGOMERY TRACT, AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE 64 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 5, DISTANT THEREON SOUTH 89 DEGREES 35' 15" WEST, 428.47 FEET FROM THE NORTHEAST CORNER THEREOF;  
THENCE CONTINUING SOUTH, 89 DEGREES 35' 15" WEST, 162.03 FEET ON SAID NORTH LINE TO AN ANGLE POINT IN THE NORTH LINE OF THAT CERTAIN PARCEL DESCRIBED IN DEED TO BRUCE GILCHRIST CHEVROLET COMPANY, INCORPORATED, RECORDED JANUARY 27, 1966 AS INSTRUMENT NO. 9793 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;  
THENCE NORTH 44 DEGREES 48' 11" WEST, 139.94 FEET ON SAID NORTH LINE TO AN ANGLE POINT;  
THENCE SOUTH 89 DEGREES 35' 15" WEST, 335.89 FEET ON SAID NORTH LINE;  
THENCE SOUTH 00 DEGREES 45' 53" EAST, 462.55 FEET TO A POINT ON THE NORTHERLY LINE OF RAMSEY STREET, DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED MAY 29, 1940 AS INSTRUMENT NO. 2192 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;  
THENCE SOUTH 88 DEGREES 41' 04" EAST, (RECORD SOUTH 88 DEGREES 05' 30" EAST) ON SAID NORTHERLY LINE, 595.55 FEET;  
THENCE NORTH 00 DEGREES 45' 36" WEST, 380.51 FEET TO THE POINT OF BEGINNING;

EXCEPTING THAT PORTION, IF ANY, LYING WITHIN THE EAST HALF OF SAID LOT 5.

APN 537-100-043-1 AND 537-100-044-2



EXHIBIT "A"

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF BLOCKS 2, 3 AND 5 OF THE GINZEL-MONTGOMERY TRACT, AS SHOWN BY MAP ON FILE IN BOOK 8, PAGE 64 OF MAPS, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE ORIGINAL NORTH LINE OF HIGHWAY 99, WHICH IS ALSO THE CENTER POINT OF THE SOUTH LINE OF SAID BLOCK 5;

THENCE EAST 100 FEET ALONG SAID SOUTH LINE OF BLOCK 5 AND THE NORTH LINE OF HIGHWAY 99;

THENCE NORTH AND PARALLEL WITH THE EAST LINE OF BLOCKS 5, 3 AND 2, TO THE NORTH LINE OF SAID BLOCK 2 OF SAID GINZEL-MONTGOMERY TRACT;

THENCE WEST ALONG THE NORTH LINE OF SAID BLOCK 2, TO THE NORTHWEST CORNER THEREOF;

THENCE SOUTH ALONG THE WEST LINE OF SAID BLOCKS 2 AND 3 OF SAID GINZEL-MONTGOMERY TRACT TO A POINT WHICH IS 100 FEET NORTH OF THE SAID SOUTHWEST CORNER OF SAID BLOCK 3;

THENCE EAST AND PARALLEL WITH THE NORTH LINE OF BLOCKS 4 AND 5 OF SAID GINZEL-MONTGOMERY TRACT, A DISTANCE OF 880.8 FEET;

THENCE IN A SOUTHEASTERLY DIRECTION TO A POINT ON THE NORTH LINE OF SAID BLOCK 5 WHICH IS 980.8 FEET FROM THE SOUTHWEST CORNER OF SAID BLOCK 3;

THENCE EAST ALONG THE NORTH LINE OF SAID BLOCK 5 TO A MIDPOINT OF THE NORTH LINE OF SAID BLOCK 5;

THENCE SOUTHERLY TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THOSE PORTIONS THEREOF CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID BLOCK 2, INCLUDED WITH PARCEL S150-1 OF THE RIVERSIDE COUNTY FLOOD CONTROL DISTRICT, PERSHING CHANNEL.

SAID PROPERTY IS ALSO SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 58, PAGE 6 OF RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS.

EXCEPT ANY PORTION LYING WITHIN TRACT 23446 RECORDED IN BOOK 244, PAGES 72 THROUGH 76 INCLUSIVE, RECORDS OF RIVERSIDE COUNTY.

**EXHIBIT B TO AGREEMENT FOR PURCHASE OF  
OPERATING COVENANT AND OPERATING COVENANT**

: Site Map

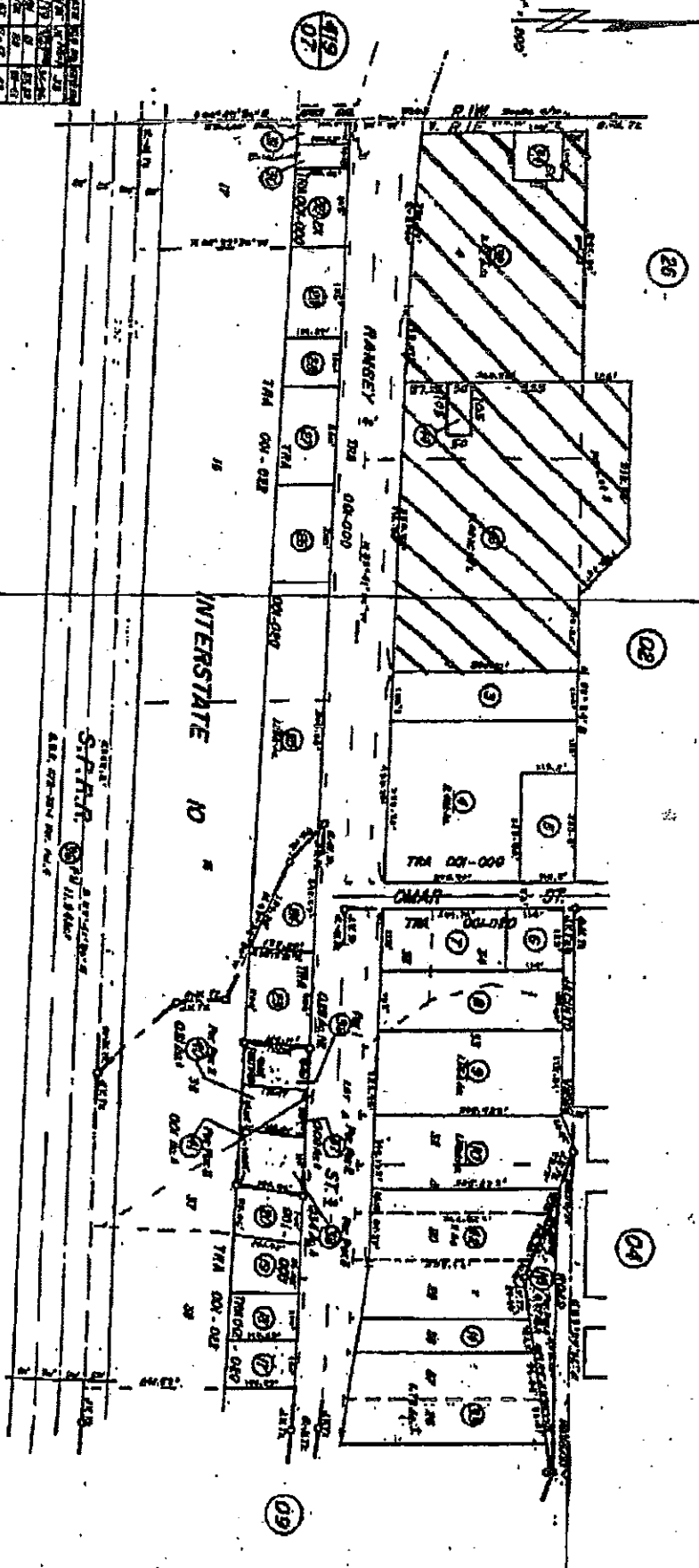
[to be attached]

1-93-13

TRA: 001-000  
001-010  
001-012

THIS MAP SHOULD BE USED FOR REFERENCE PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

**THIS MAP IS FOR  
ASSESSMENT PURPOSES ONLY**



1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	2965	2966	2967	2968	2969	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FM 58437-38 Parcel May 78-23  
 M.R. 45041 Great-Western Railway Tract  
 M.R. 18231 San Antonio Valds Tract  
 R.R. 21999 May 1911 May 18-2  
 R.R. 41259 67-53-1  
 C.W. C. 1887-22, 14, 48-501  
 OCTOBER 1909

PM 12/39 PCH/Map 74-1  
PK 56/37 PCH/Map 15449

ASSISTANT'S WFO 811 337 PM 10  
INTERVIEW COUNTY, CALIF.

**JUNE 10 2003**



**T.S.A. 005-143**

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537-26 LePaf  
SIR: A

Jan 194



2411 S. ALICE - MONROVIA TRAIL  
LOS ANGELES 24, CALIF. 90034

**1015**

JUN 4 2003

DATE	FILE NO.
11-1-68	11-1-68

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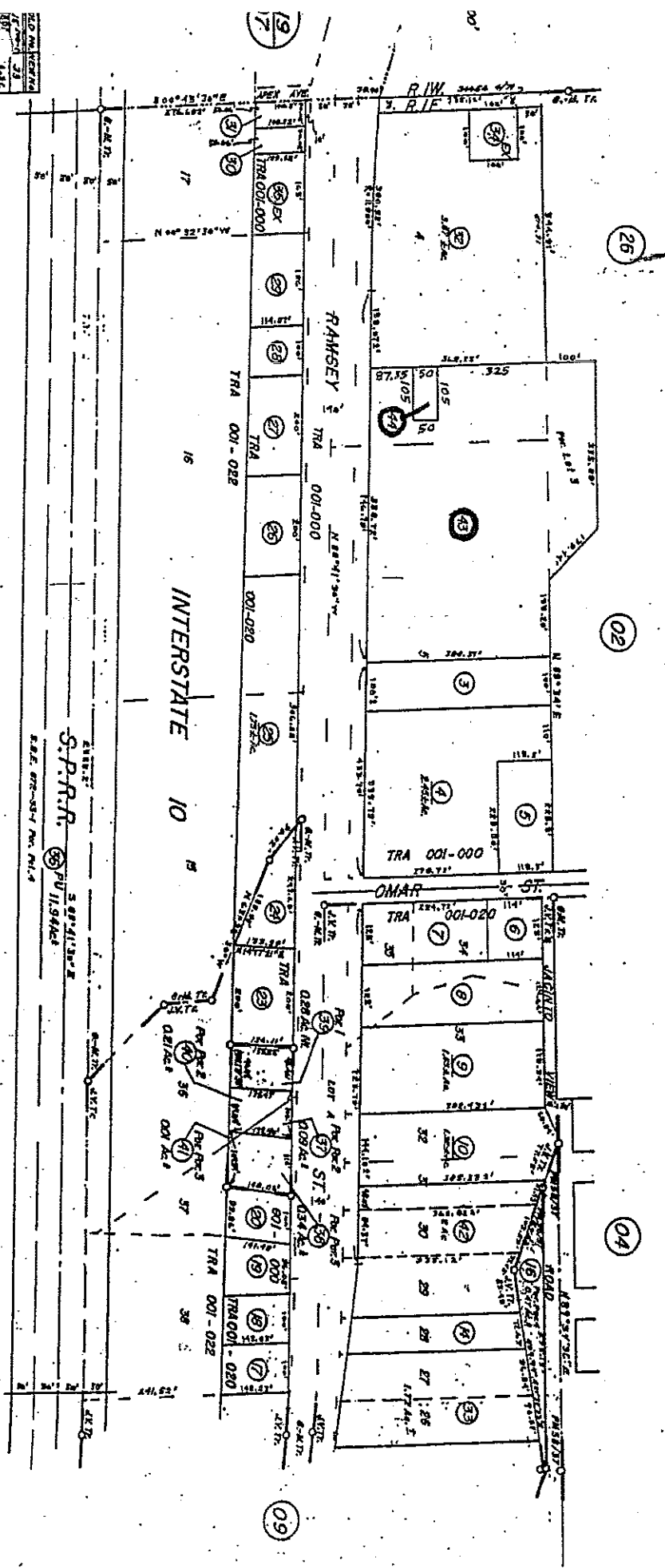
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to broken  
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Lot 5

37-100

TRA 001-000  
001-020  
001-022

POR. N1/2 SEC. 7 T.3S. R.1E.

THIS MAP IS FOR  
ASSESSMENT PURPOSES ONLY



LOT	AREA
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39	1.36

R.M. 58/37-38 Parcel Map 78-29  
M.B. 8/64 Gravel-Montgomery Tract  
M.B. 18/31 San Jacinto Vista Tract  
Date: State Map Map VIII Rev 28-B  
S.B.E. Map 672-33-1  
R.M. 17/39  
Oct C. 1967 -02, LLA Q-501  
OCTOBER 1969

R.M. 17/39 Parcel Map 74-1  
R.M. 36/37 Parcel Map No. 15449

This plat is for your aid in locating your land with reference to streets and other parcels. It is not a survey. While this plat is believed to be correct, the Company assumes no liability for any loss occurring by reason of reliance thereon.  
CHICAGO TITLE INSURANCE COMPANY

JUN 9 2003  
ASSESSOR'S MAP BK. 537 PG. 10  
RIVERSIDE COUNTY, CALIF.

**EXHIBIT C TO AGREEMENT FOR PURCHASE OF**  
**OPERATING COVENANT AND OPERATING COVENANT**

Management Agreement

## MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 25<sup>th</sup> day of January 2005, by and between SUNSET CHEVROLET-OLDSMOBILE, INC., a California corporation (hereinafter referred to as "Dealer") and MARK CHRISTOPHER CHEVROLET, INC., a California corporation (hereinafter referred to as "Manager"). The parties agree as follows:

### RECITALS

WHEREAS, Dealer is engaged in the sales and service of new automobiles in Banning, California, specifically including but not limited to the sales and service of Chevrolet, GMC Truck, Pontiac, and Buick automobiles;

WHEREAS, Dealer and its Shareholders are entering into an agreement under which Dealer will sell substantially all of its assets to Manager; and

WHEREAS, Dealer and its shareholders believe that it is in the best interest of the dealership to retain the services of Manager to operate the dealership's business affairs pending consummation of the agreement for the purchase and sale of assets between Dealer and Manager.

NOW, THEREFORE, the parties agree to retain the services of Manager upon the terms and conditions contained in this Agreement.

### ARTICLE I.

#### SERVICES TO BE PERFORMED BY MANAGER

1.01. Appointment of Manager: Dealer hereby engages Chris Leggio and Warren Fagerstrom on behalf of Manager to provide management and supervision of its dealership located at 4545 W. Ramsey Street, Banning, California, in accordance with the terms of this Agreement.

1.02. Responsibilities and Duties: During the term of this Agreement, Manager, through its employees, will supervise the operation of the dealership.



Manager shall be responsible for all aspects of the dealership operation, including but not limited to the following:

A. Hiring, training, supervising and terminating the General Sales Manager, New Car Sales Manager, Used Car Sales Manager, and F& I Manager, each of whom may be present or former employees of Manager. The compensation for these managers shall be determined by Manager. Although these managers shall be selected by and report to Manager, they shall be employees of Dealer, and their salaries shall be paid by Dealer.

B. Hiring, training, supervising, and terminating all other employees of Dealer. Manager shall also determine the compensation for these employees.

C. Ordering, purchasing and selling new Chevrolet, GMC Truck, Pontiac and Buick automobiles, used automobiles, parts and accessories consistent with the obligations of Dealer under the Sales and Service Agreements with General Motors Corporation ("GMC").

D. Ordering and purchasing, in the normal course of business, such supplies, inventory, equipment or other similar capital expenditures as are necessary to operate the Dealership.

E. Supervising the sale of products and services in all departments of the dealership.

F. Maintaining the dealership premises and equipment.

G. Conducting the general administration of the dealership's affairs.

1.03. General Authority: Unless otherwise provided, Manager shall possess, to the greatest degree allowable under the laws of the State of California and under Dealer's Sales and Service Agreement with GMC, the exclusive right to manage and direct all business affairs of Dealer consistent with Dealer's obligations under its Sales and Service Agreements with GMC and subject to the obligations of Dealer under its Dealer Sales and Service Agreement with GMC and as the licensed dealer of record.

1.04: Amount of Service: Manager, through its employees, shall devote such time to the affairs of the dealership as necessary to satisfy the obligations of Seller under its Dealer Sales and Service Agreement.

1.05. Fiscal Policy: The Dealer recognizes the necessity for a sound fiscal policy. Manager shall provide funding for the operations of Dealer through new bank accounts that shall be set up and on which Manager shall be signatory. All business arising prior to the date of this Management Agreement shall be run through Dealer's prior bank accounts and all business arising on or after the date of this Agreement and through termination of this Agreement shall be run through the new bank accounts. The Manager shall periodically prepare a budget for the dealership business. The budget shall include employee salaries, the purchase and sale of capital assets and similar capital improvements. The budget shall be submitted to the Dealer's Board of Directors for approval, and such approval shall not be unreasonably withheld. Once a budget is approved, the Dealer's Board of Directors and officers shall cooperate in obtaining any necessary financing, whether it be short term or long term indebtedness provided said indebtedness shall be the obligation of Manager.

1.06. Manager's Performance: While it is the intent of Manager to operate the dealership in a commercially reasonable and profitable manner, Manager cannot and does not guarantee any specific results, however, Manager agrees to be responsible for all obligations incurred by Manager on behalf of Dealer.

1.07 Manager's Supplementation of Inventory. Manager may, in its sole discretion and at its sole expense, supplement Dealer's inventory of New and Used Vehicles with vehicles from Manager's inventory, in which case Manager shall receive all profits generated by such supplemented inventory and for which Manager shall be responsible for all losses or liabilities associated with such supplemented inventory.

ARTICLE II.  
DUTIES OF DEALER

2.01. Cooperation in Operation of Dealership: Dealer shall cooperate and perform all obligations and responsibilities necessary for the efficient operation of the dealership, including but not limited to the following:

A. All obligations and responsibilities imposed upon Dealer under the Sales and Service Agreements with GMC.

B. The maintenance of any licenses issued by the Department of Motor Vehicles or any other agency in the State of California.

C. Cooperation with Manager in obtaining a flooring line to the full invoice amount of its new vehicles with its existing inventory financing institutions on new vehicles ordered and purchased by Manager in accordance with Article I of this Agreement.

D. Cooperate with Manager to preserve and maintain the business relationships with distributors, suppliers, customers and others having business relationships with the dealership.

2.02. Management Authority: During the term of this Agreement, Dealer, and its directors and officers, shall defer all management authority to Manager to the greatest degree allowable under the laws of the State of California and under Dealer's Sales and Service Agreement with GMC and Dealer's and consistent with Dealer's obligations as dealer of record.

ARTICLE III.  
TERM AGREEMENT AND COMPENSATION

3.01. Term of Agreement: This Agreement shall commence at 12:01 a.m. on March 1, 2005. Unless otherwise terminated as provided herein, this Agreement shall continue in full force and effect until the earlier of (i) consummation of the purchase and sale agreement between the parties as contemplated by the Recitals

or (ii) cancellation of the purchase and sale agreement between the parties as otherwise allowed under the terms and conditions of said agreement.

3.02. Manager's Prior Access to Dealership: Beginning on February 25, 2005 and continuing through February 28, 2005, Dealer shall give Manager access to the Dealership, and to Dealer's employees, and will allow Manager's employees to assist Dealer with the operation of Dealership. Any profits earned by the Dealership during such time shall be Dealer's sole property. For purposes of this Section 3.02, Dealer shall give access to the following individuals: Chris Leggio and Manager's General Manager, Office Manager, Parts Manager and Service Manager.

3.03. Termination by Manager: Manager may terminate this Agreement upon ten (10) days written notice, with or without cause.

3.04. Termination by Dealer: Should Manager default in the performance of this Agreement or materially breach any of its Provisions, Dealer may terminate this Agreement by giving written Notice of Default to Manager. The Notice of Default shall specify the grounds for termination and shall be supported by a statement of all relevant facts. Manager shall then be given a period of thirty (30) days within which to correct or cure said breach. In the event the correction or cure is not reasonably acceptable to Dealer, it may elect to terminate this Agreement by giving written Notice of Termination to Manager, without prejudice to any other remedy which either party may be entitled either in law or in equity under this Agreement. In the event of any litigation regarding this termination, Dealer shall be limited to those issues and defenses which were specifically itemized in the Notice of Default or the Notice of Termination.

3.05. Termination by Agreement: This Agreement may be terminated at any time upon the mutual written agreement of the parties, and upon such terms and conditions as the parties may agree.

3.06. Compensation to Frank and Nancy Coletto: During the term of this Agreement Frank and Nancy Coletto shall each receive a salary in the sum of Five Thousand Dollars and No Cents (\$5,000) per month. All monies paid pursuant to this Section 3.06 shall be credited toward the Purchase Price, as that term is

defined in the purchase and sale agreement between the parties as contemplated by the Recitals. If, for any reason, the purchase and sale agreement is not consummated by the parties, then Frank and Nancy Colletto shall have no obligation to return the monies paid pursuant to this Section 3.06 to Buyer.

3.07. Manager's Compensation: Manager shall not be entitled to any specific amount of compensation for the services rendered under the terms of this Agreement. Instead, Manager's Compensation shall be one hundred percent (100%) of the operating profits generated by operations during the term of this Agreement and after deducting all obligations incurred during the term of this Agreement as determined by the monthly Dealers Financial Statement provided by Dealer to GMC minus amounts due to Dealer for assets of Dealer's that are sold during the term of this Agreement at the price stated in the Asset Purchase Agreement between Manager and Dealer, and subject to Section 3.06, above. For any of Dealer's used vehicles sold by Manager during the term of this Agreement, Dealer shall be paid Kelly Wholesale Blue Book value as stated on Dealer's Karpower software. This monthly Report shall be prepared by Manager, and shall be approved by Dealer, although Dealer will not unreasonably withhold its approval. If the parties disagree on an accounting method or amount used or shown on the financial statement, the dispute shall be resolved by Dealer's certified public accountant. Even though it is a partial month, the operating profits for February 2005 will not be prorated, and Manager will be entitled to one hundred percent (100%) of the operating profits and shall be responsible for 100% of the operating losses for the month of February. Likewise, no proration will occur for the month in which the purchase and sale between the parties as contemplated by the Recitals is consummated. However, if this Agreement is terminated for any reason other than the consummation of the purchase and sale, then the operating profits for the month of termination will be prorated.

#### ARTICLE IV. INDEMNIFICATION

4.01 Indemnification by Manager: Manager shall be responsible for any operating losses during the term of this Agreement as shown on the monthly Dealers Financial Statement, subject to an adjustment as otherwise provided in this paragraph and for any liabilities incurred by Manager on behalf of Dealer during the term of this Agreement. Any losses for the month of February 2005 shall be the responsibility of Manager, and any losses for the month in which this Agreement is terminated for any reason other than consummation of the purchase and sale between the parties as contemplated by the Recitals also shall be the responsibility of Manager. However, Manager shall be responsible, without proration, for all operating losses for the month in which the purchase and sale between the parties as contemplated by the Recital is consummated. For the purpose of this indemnification, operating losses shall not include any payments to any lender or creditor which are greater than the current month's regular installment payment. The intent is that the operating losses for a current month shall not be inflated, or otherwise increased, by the Dealership's past losses.

Manager shall defend, indemnify and hold Dealer, and its employees, officers, directors and shareholders and the owners of the real property on which the dealership is operated (the "Landowner"), free and harmless from any and all liability related to the operating losses, and all liabilities, obligations, claims, and expenses arising out of the operations of Dealer during the term of this Agreement and any extension thereof, including, but not limited to, claims for hazardous substance contamination, and any other claims, obligations, liabilities and expenses arising out of operation of the Dealership's business during the term of this Agreement. Nothing in the Agreement shall be construed or interpreted as creating an assumption of any of Dealer's liabilities, debts or similar claims existing as of the date of this Agreement by Manager, and Manager shall not be obligated to indemnify Dealer for any existing liability, debt or similar claim which arose before the date of this Agreement. Manager's indemnification obligation is limited solely

to the operating losses, and all liabilities, obligations, claims, and expenses arising out of the operations of Dealer incurred on and after the date of this Agreement and shall exclude any claims arising out of the termination of any of Dealer's employees pursuant to Section 7.01 of the purchase and sale agreement. The parties agree that Dealer and not Manager shall send out the notice required by Section 7.01 immediately prior to closing. Manager shall use operating income to pay debts as they become due.

4.02. Indemnification by Dealer: The Dealer shall defend, indemnify and hold Manager, and its employees, free and harmless to the fullest extent to which a corporation may be empowered to do so from any and all obligations, costs, claims, judgments, attachments, attorney's fees or any other liability arising from or growing out of any obligations incurred by Dealer prior to the date of this Agreement and Dealer shall have exclusive access to all income generated by Dealer prior to the date of this Agreement even if received after the date of this Agreement.

4.03. Insurance: Dealer shall maintain at its expense policies of general liability insurance, including errors and omissions upon the directors, officers, employees and agents of the Corporation in the minimum amount of One Million Dollars and No Cents (\$1,000,000.00). Manager shall be named as an additional insured under the policies.

#### ARTICLE V. MISCELLANEOUS PROVISIONS

5.01 Notices: Any and all notices, demands or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice, demand or other Communication be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication be given by mail, such shall be

5.09 Construction: Both parties participated in the drafting of this Agreement. Therefore, no greater or stricter construction shall be applied to any party hereto.

5.10 Independent Counsel: Dealer, and its shareholders, acknowledge that they have been advised to obtain independent counsel to advise them of the contents of this Agreement, the effects of this Agreement and the rights which have been acquired or waived by executing this Agreement. Dealer specifically acknowledges that Clifford & Brown acted as attorneys for Manager in preparing this Agreement, and said firm did not advise Dealer, or its shareholders, regarding this Agreement nor represent their interest.

IN WITNESS WHEREOF, the parties have executed this Agreement in Banning and Ontario, California, as of the date and year first written above.

DEALER

MANAGER

SUNSET CHEVROLET-OLDSMOBILE,  
INC., a California corporation

MARK CHRISTOPHER  
CHEVROLET, INC., a California  
corporation

By \_\_\_\_\_  
FRANK COLETTA  
President

By Mark A. Leggio  
MARK LEGGIO  
President

By Christopher M. Leggio  
CHRISTOPHER LEGGIO  
Vice-President

112/162/1480-1/Management Agr-Sunset

MANAGEMENT AGREEMENT  
SUNSET AUTO PLAZA/MARK CHRISTOPHER CHEVROLET

Page 11



CLIFFORD BROWN

02/26/05 10:28 FAX 681 322 3508

CLIFFORD BROWN

0058

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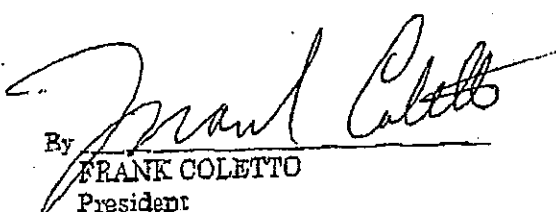
IN WITNESS WHEREOF, the parties have executed this Agreement in Banning and Ontario, California, as of the date and year first written above.

DEALER


SUNSET CHEVROLET-OLDSMOBILE,  
INC., a California corporation

MANAGER

MARK CHRISTOPHER  
CHEVROLET, INC., a California  
corporation

By   
FRANK COLETTA  
President

By   
MARK LEGGIO  
President

By   
CHRISTOPHER LEGGIO  
Vice-President

112/132/1486-1/Management Agr-Sunset

MANAGEMENT AGREEMENT  
SUNSET AUTO PLAZA/MARK CHRISTOPHER CHEVROLET

Page 11

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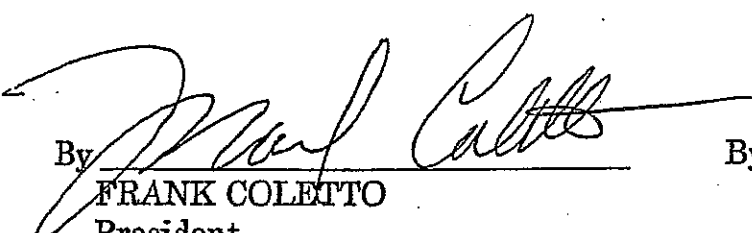
DEALER

MANAGER

SUNSET CHEVROLET-OLDSMOBILE,  
INC., a California corporation

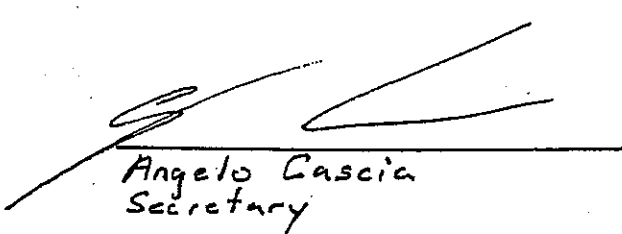
MARK CHRISTOPHER  
CHEVROLET, INC., a California  
corporation

By

  
FRANK COLETTA  
President

By

MARK LEGGIO  
President

  
Angelo Cascia  
Secretary

By

CHRISTOPHER LEGGIO  
Vice-President

112/132/1480-1/Management Agr-Sunset

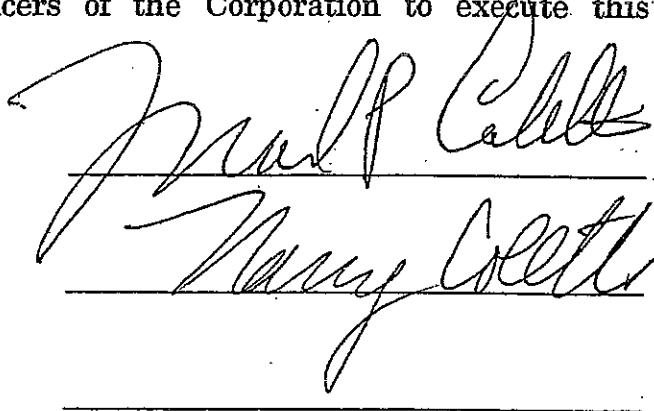
## SHAREHOLDER CONSENT

The undersigned, as shareholders of SUNSET CHEVROLET-OLDSMOBILE, INC., a California corporation, hereby join in this Agreement. Furthermore, the undersigned hereby authorize the officers of the Corporation to execute this Agreement on behalf of the Corporation.

Dated: February 26<sup>th</sup>, 2005

Dated: February 26, 2005

Dated: February \_\_, 2005



**ATTACHMENT 2**  
**AMENDED & RESTATED OPERATING COVENANT AGREEMENT**

AMENDED AND RESTATED AGREEMENT FOR  
PURCHASE OF OPERATING COVENANT

between

THE CITY OF BANNING,

a municipal corporation

and

DIAMOND HILLS AUTO GROUP, INC.,

a California corporation

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

Commencement Date: January 1, 2012

**AMENDED & RESTATED AGREEMENT FOR  
PURCHASE OF OPERATING COVENANT & OPERATING COVENANT**

This Amended & Restated Agreement for Purchase of Operating Covenant & Operating Covenant ("**Agreement**") is entered into between (i) the CITY OF BANNING ("**Banning**"), a municipal corporation, and (ii) DIAMOND HILLS AUTO GROUP, INC. ("**Dealership**"), a California corporation. Banning and Dealership are each individually referred to as a "party" and collectively as the "parties".

**1. EFFECTIVE DATE**

This Agreement will not become effective until it (i) has been duly executed by the authorized officers of the Dealership and delivered to Banning, and (ii) has been duly approved by the City Council of the City of Banning (the "**Effective Date**").

**2. RECITALS AND REPRESENTATIONS**

2.1 The Dealership represents and warrants to the City that it has the legal right to use and occupy that certain real property (the "**Property**") located within the City of Banning, and commonly known as 4661 W. Ramsey Street, Banning, California. A legal description of the Property is attached as Exhibit "A". A map showing the location of the Property is attached as Exhibit "B".

2.2 The Dealership represents and warrants to the City that, pursuant to a management agreement its affiliate, Mark Christopher Chevrolet, Inc., a Delaware Corporation ("**Manager**"), is operator of the "**Existing Facility**" (hereinafter defined) located on the Property and that it has an option to purchase said parcel from its current owner, Sunset Chevrolet/Oldsobile, Inc., a California Corporation and Frank Coletto. A copy of the Management Agreement is attached hereto as Exhibit "C". "Dealership" includes any entity in which the principals of Dealership own a controlling interest.

2.3 On September 27, 2005, the City and Dealership entered into an "Agreement Regarding Operating Covenant" (the "Original Agreement") whereby the City agreed to (i) Pay the Dealer \$2,000,000 over a ten year period, or until September 2015; (ii) Provide the parties an option to extend the Original Agreement by ten years, or until September 2025, and create a new ceiling of \$5,000,000 if the Dealer added a maximum of two new dealer franchises to the existing dealership; and (iii) Pay the Dealer a sliding percentage scale of sales tax as long as the City maintained a minimum threshold of \$200,000 per year in sales tax by the Dealer. The percentage split ranged from 80% in Year 1 and decreased 5% per year until the percentage split was 50% in Year 7. Essentially, therefore, the Original Agreement contemplated a tax-sharing arrangement between Banning and Dealership by which the parties would eventually split the City's sales tax revenue generated from the Dealership's Banning operations on a 50/50 basis.

2.4 Since mid-2006, the U.S. economy has been suffering a "Great Recession"—the worst economic conditions since the Great Depression of the 1930's. As the economy struggles to recover cities are facing an especially difficult time attracting business and expanding business in their respective communities. The effects of the Recession have been profound on Banning

and communities in the region. Although national unemployment rates are improving slowly, California's job recovery is still a major problem. The May 2012 unemployment rate in California was 11%, while the national unemployment rate was 8.1%. The unemployment rate in Riverside County in May 2012 was 12.8%, while the unemployment rate in Banning was 14.6%, which is 6.5% above the national rate. Economists believe that these unemployment rates are understated, since many individuals are underemployed or have stopped actively searching for jobs.

2.5 In light of the ongoing Recession and the elimination of redevelopment in California pursuant to the adoption of AB1x 26 and the decision of the California Supreme Court in *CRA v. Matosantos* in January 2012, Banning determined that it must develop an alternative means of eliminating blight and undertaking economic development. Thus, Banning adopted Ordinance 1453 on June 12, 2012, establishing an "Economic Development Incentive Program" geared towards attracting new businesses and helping existing businesses to expand and flourish in the community. The goal of this Program is to promote public/private partnerships, encourage businesses to grow and expand, retain and create jobs, promote economic growth in the City, enhance community image, and invest in infrastructure improvements. The Program provides financial assistance to businesses if the business meets specific criteria and provides a significant long-term benefit to the general public. To accomplish the purposes provided in the Program, the City and its associated and subordinated entities shall have the power to carry out policies, plans and programs, to enact measures, to enter into agreements, and to loan, grant, fund, or finance projects which will provide public benefit and protect the public health, safety and welfare of the community. The Program, as codified at Chapter 3.28 of the Banning Municipal Code, specifically provides for the use of "Economic Development Agreements" and "Tax Rebate Agreements" for sales taxes, transient occupancy taxes, utility taxes or other taxes to be shared with the generator, and rebates or waivers of franchise fees, business license fees, development impact fees, or other revenue sources but any such tax may only be imposed in accordance with law. (*See*, BMC § 3.28.020(F).)

2.6 The Dealership results in significant municipal benefits to Banning and its citizens, including, without limitation, the creation of significant new numbers of employment opportunities, property tax revenues, sales tax revenues, and other ancillary benefits. However, as a result of the Recession, the City has only shared approximately \$115,000 in sales tax revenue with the Dealership under the 2005 Original Agreement. This total is well below what the Dealership and City originally projected given ongoing economic conditions. For sixteen quarters the Dealer did not generate enough sales to qualify for a percentage split in sales tax under the Original Agreement. However, as the Recession slowly subsides, in the fourth quarter of 2011 the Dealership finally started to see a small increase in their sales, which exceeded the required threshold amount and did result in a small rebate of same tax per the Original Agreement.

2.7 In short, the Original Agreement was negotiated and structured pursuant to certain economic assumptions that were thwarted by the unusual circumstances of the Great Recession, and this has in turn substantially frustrated the ability of the parties to share sales tax revenues in the manner originally contemplated. Therefore, Dealership has requested this Agreement to amend the Original Agreement as follows: (i) To remove the ceiling of \$2,000,000 and ten years as outlined in the Original Agreement; (ii) To establish a minimum sales tax threshold of

\$25,000 per quarter or \$100,000 per year before the City and the Dealership would split 50% of the sales tax generated over that threshold; (iii) To establish a seven year term with two option periods each having a two year time frame potentially adding four additional years to the term; (iv) To condition the Dealership to remain in the City of Banning during the term of the Amended Agreement, which includes operating out of their existing location at 4661 W. Ramsey, relocating to a new location within the City, or operating multiple locations within Banning; (v) To condition the Dealership to provide various upgrades and improvements to their Existing Facility, provide new improvements to another location in Banning, or provide improvements to multiple locations in Banning; and (vi) To make the contractual obligations and rights terminable at the will of either party at any time. Without such amendments to allow actual sharing of sales tax revenues between the City and Dealership, the Dealership could potentially be forced to cease operations in the City and/or would be unable to make upgrades and improvements to its Existing Facility (or any other location in Banning) as needed to remain competitive and viable.

2.8 The parties believe that it is in the public interest to retain the operations of Dealership in the City for the following reasons: (i) The Dealership is the only new vehicle dealer in the City, thus providing a unique service that is not fulfilled by any other business in the City; (ii) The Dealership generates an average of 10% of the City's total sales tax revenues in any given year and is thus one of Banning's most significant tax-generating business; (iii) The Dealership currently has 49 full time employees and 7 part time employees, and the Dealership is anticipating adding approximately 7 new positions by the end of this year; (iv) Since 2005, the Dealership has provided enhancements and improvements to its existing location and has supported numerous non-profits, businesses, and City-related events during this time period; and (v) if the Dealership were to close, it would leave vacant a site that otherwise may be very difficult to utilize. This Agreement is in accord with applicable state and federal laws and is in the vital and best interests of the community, will serve the health, safety, and general welfare of the City and its citizens, will serve to strengthen the City's land use and social structure, and alleviate economic and physical blight within the City.

2.9 Based upon the foregoing understandings, the specific purpose of this Agreement is to amend and restate the Original Agreement to provide Dealership with financial assistance consistent with Chapter 3.28 of the Banning Municipal Code via rebates of local sales tax and implement the other amendments outlined in Recital 2.7 above.

### **3. TERMS OF OPERATING COVENANT & SALES TAX SHARING**

3.1 Definitions. In addition to the defined terms set forth in various sections of this Agreement, the following terms shall have the following meanings:

3.1.1 **Base Amount:** The "Base Amount" means the amount of Sales Tax Revenue the City must receive during each Computation Period and/or Computation Year before the City is required to make a Covenant Payment to Dealership. For the purposes of this Agreement, the Base Amount for each Computation Period shall be Twenty-Five Thousand Dollars and No Cents (\$25,000.00) and the Base Amount for each Computation Year shall be One Hundred Thousand Dollars and No Cents (\$100,000.00). The City keeps the Base Amount.



**3.1.2 Claims and Liabilities:** "Claims and Liabilities" means any and all claims, demands, damages, causes of action, liens, liabilities, losses, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with this Agreement and/or the sharing of Sales Tax Revenues hereunder. Claims or Liabilities include, but are not limited to, actions where (i) the City, its officers, agents or employees, is made a party to any action or proceeding filed or prosecuted against Dealership for any such Claims or Liabilities, or (ii) Dealership, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Banning for any such Claims or Liabilities.

**3.1.3 Commencement Date:** "Commencement Date" means January 1, 2012.

**3.1.4 Computation Period:** "Computation Period" shall mean each continuous three (3) month period during the Eligibility Period. There will be a total of twenty-eight (28) Computation Periods within the Eligibility Period. From the Commencement Date, the first Computation Period was January 1 through March 31, 2012. The second Computation Period shall be commence April 1, 2012, and ending June 30, 2012, and so on.

**3.1.5 Computation Year:** "Computation Year" shall mean four (4) immediately successive Computation Periods. Unless extended pursuant to Article 4 hereof, there shall be a total of seven (7) Computation Years within the Eligibility Period (or January 1, 2012, through December 31, 2018).

**3.1.6 Covenant Payments:** "Covenant Payments" means those contingent payments made by Banning to Dealership pursuant to Section 3.3 of this Agreement for the purchase of the Operating Covenant described in Section 3.2 of this Agreement.

**3.1.7 Dealership Activities:** "Dealership Activities" means the commercially reasonable business practices and activities associated with conducting an automobile dealership, including, but not limited to, the selling, leasing, rental; purchasing, transporting, servicing, repairing, and detailing of new and used motor vehicles, including, but not limited to, automobiles, trucks, and any other motorized vehicle, and all other related activities conducted directly by Dealership, concessionaires, or lessees thereof, in the City of Banning.

**3.1.8 Default:** "Default" means the following:

- a) Dealership fails to strictly abide by any material provision of this Agreement, including, without limitation, the Operating Covenant;
- b) Dealership fails to make any reasonable improvements, repairs or other alterations as required by Article 7; or
- c) Dealership relocates any of its business operations in the City of Banning to an area outside the jurisdictional boundaries of the City of Banning; or
- d) Dealership fails to make any reasonable improvements, repairs or other alterations to the Existing Facility, at Dealership's sole cost, expense and liability, that may be required pursuant to any applicable Federal, State or local ordinances and regulations; or

- e) Dealership fails to maintain the Existing Facility as a first class auto sales center; or
- f) Dealership fails to maintain the appropriate master sales permits for the sale and resale of automobiles, trucks, and other motor vehicles from the Existing Facility; or
- g) Dealership fails to designate Banning as the point of sale on all sales tax returns to the State of California and in all sales and lease contracts or other transactions related to Dealership Activities conducted at the Existing Facility.

**3.1.9 Eligibility Period:** "Eligibility Period" means the period commencing on the Commencement Date and ending seven (7) years thereafter (subject to extension as hereinafter provided in Article 4 or unless terminated sooner pursuant to specific provisions of this Agreement). The total potential Eligibility Period for the Agreement equals seven (7) years from the Commencement Date, plus two potential seven-year extensions, or a total potential of eleven (21) years. The Eligibility Period is occasionally herein interchangeably referred to as the "term" of this Agreement.

**3.1.10 Existing Facility:** As used in this Agreement, "Existing Facility" shall mean the existing Chevrolet/Oldsmobile automobile dealership and the physical structures, fixtures, landscaping, and all other improvements appurtenant thereto, located on the Property.

**3.1.11 Indemnity Costs:** "Indemnity Costs" means all costs of defending or prosecuting suits or claims, including actual attorneys' fees and expert witness fees incurred in enforcing, perfecting and executing a judgment or award arising from, or related to, either the enforcement or performance of this Agreement or suits/claims relating to, or arising from, the subject matter of this Agreement. Indemnity Costs include, without limitation, attorneys', consultants' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) administrative proceedings and SBE proceedings, (iv) garnishment, levy and debtor and third party examination; (v) discovery; and (vi) bankruptcy litigation. Such costs include all costs of necessary experts including appraisers, financial analysis, tax analysis, audits, and all other necessary consultants. Such costs further include the costs of any settlement or judgment concerning Claims or Liabilities.

**3.1.12 Sales Tax:** "Sales Tax" means all sales and use taxes levied under the authority of the California "Sales and Use Tax Law", Part 1 of Division 2 of the California Revenue and Taxation Code, commencing with Section 6001, and any successor law thereto.

**3.1.13 Sales Tax Revenue:** "Sales Tax Revenue" means that portion of taxes derived and received by Banning from the imposition of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5, Division 2 of the California Revenue and Taxation Code, Sections 7200, *et seq.*), as it currently exists and as it may be from time to time, amended, repealed and reenacted, renamed, and/or otherwise modified, arising from Dealership Activities conducted at the Existing Facility on the Property. Actual Sales Tax Revenue for each fiscal year shall be determined based upon the final audited sales tax figures released for such fiscal year by the State of California. Sales Tax Revenues shall not include (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for, or allocated to the State of California, the County of Riverside, a

district or any entity (including an allocation to a statewide or countywide pool) other than the City, (iii) any administrative fee charged by the SBE, (iv) any Sales or Use Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except the City's) law, rule, or regulation, (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period, or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the state) or set aside and/or pledged to a specific use other than for deposit into or payment from Banning's general fund including retroactively. The term "Sales Tax Revenues" refers to Sales Tax amounts paid by Dealership and allocable to Banning *prior* to any rebate or offset thereof under the tax sharing arrangements in this agreement.

3.2 Operating Covenant; Situs for Tax Purposes. The Dealership covenants and agrees for itself and all voluntary and involuntary successors and assigns to, that, for the duration of the Eligibility Period (subject to extension as hereinafter provided and unless terminated sooner pursuant to specific provision of this Agreement), the Dealership shall operate, or cause to be operated, upon the Property the entirety of the Existing Facility in a commercially reasonable business manner, consistent with all applicable provisions of Federal, State and local laws and regulations. The Dealership Activities shall be conducted on the Property from the Existing Facility. Subject to Section 3.1.5, the Existing Facility shall be operated in accordance with the reasonable and customary automobile dealership practices in the surrounding communities. The Dealership or its successor will operate and maintain the Existing Facility in a commercially reasonable and prudent manner, with the objective of being regarded as a first class auto sales center and to generate the greatest feasible amount of Sales Tax Revenue. To this end, the Dealership shall not cause interruption to, or ceasing of, Dealership Activities for a period of more than three (3) consecutive business days and Dealership shall maintain hours of business in keeping with customary automobile dealership practices. The Dealership's obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to advertise, market and promote the Existing Facility in a commercially reasonable fashion, once again consistent with the objective of maximizing the amount of Sales Tax Revenue. Dealership acknowledges that it is solely responsible for any and all City business license fees and any applicable permits.

3.2.1 *Banning as Situs.* For the term of this Operating Covenant, the City of Banning shall be designated as the situs for all purposes of Sales Tax generated by the Dealership and resulting from the Dealership Activities. Dealership shall obtain, and will maintain, a retail sales tax permit from the SBE. Dealership will take all reasonable actions to maximize Banning sales and assure that transactions occurring in the City of Banning will be qualifying retail sales for Sales Tax purposes in accordance with the rules and regulations of the SBE. Dealership will act and cause its business, unless otherwise agreed to by City, to be the place of sale for all retail sales made by Dealership during the term of this Agreement. In all sales reports filed by Dealership with the SBE, relating to retail sales, where such a designation is permitted or required under the Sales and Use Tax Law, Dealership specify Banning as the place of sale for all of its retail sales. Dealership shall not decrease the scope of its operations at the Existing Facility from their levels of service existent as of the Effective Date hereof without the prior written approval of City, which approval may be executed by the City Manager and shall not be unreasonably withheld or delayed.

3.2.2 *Use of Property.* The Property shall be used only for the purposes of the operation of the Existing Facility for Dealership Activities in accordance with this Agreement, or for the operation of substitute automobile dealership facilities acceptable to Banning in its reasonable discretion and subject to prior written approval of City, which approval may be executed by the City Manager and shall not be unreasonably withheld or delayed.

3.2.3 *Marketing.* Dealership, in the normal course of its business as it produces promotional, sales, advertising, marketing, packaging, and other such materials relating to its Dealership Activities and the Existing Facility shall ensure that such materials prominently display and identify the City of Banning as a major center of Dealership's sales and operations. City is hereby given license by Dealership to use the name, likeness, or other description of Dealership and/or the Existing Facility in City marketing, promotional, or information material prepared for or used by the City. City shall provide Dealership with a reasonable opportunity to review and comment upon any such materials utilizing Dealership's name, likeness or other description. The use of any trademark or servicemark shall be subject to the standards and or requirements associated with the use of such trademark or servicemark.

3.2.4 *Improvements.* Dealership shall build all improvements as required by Article 7 hereof.

3.3 Payment for Operating Covenant Contingent Upon Occurrence of Certain Conditions.

3.3.1 *Sales Tax Rebate to Dealership.* This paragraph sets forth the parties' agreement with respect to Banning's acquisition of the Operating Covenant set forth in Section 3.2. The consideration to be paid to the Dealership in exchange for the Operating Covenant shall consist of Banning's payment to the Dealership, during the Eligibility Period ending on December 31, 2018 (subject to extension as hereinafter provided in Article 4) of an amount equal to fifty percent (50%) of Sales Tax Revenue in excess of the Base Amount (the "**Banning Payments to Dealership**").

3.3.2 *Conditions Precedent to Banning Payments to Dealership.* It is expressly agreed that Banning's obligations under this Section 3.3 are contingent on a Computation Period to Period basis and, for each Computation Period, Banning's obligations to make any payments hereunder are expressly contingent upon the satisfaction of the following conditions precedent in each such Computation Period:

- a) Dealership having, for the entirety of the subject Computation Period, completely fulfilled its material obligations under this Agreement, including, without limitation, the Operating Covenant; and
- b) Dealership having generated no less than the Base Amount in Sales Tax Revenues allocable to City in the subject Computation Period (i.e., at least \$25,000 in the Computation Period); or
- c) Dealership having generated no less than the Base Amount in Sales Tax Revenues allocable to City in the prior Computation Year (i.e., the \$100,000.00 Base Amount must have been generated in the prior Computation Year). For

example, as a condition precedent to the City making any Banning Payments to Dealership in the course of the year 2013, Dealership shall have met or exceeded the Computation Year Base Amount in year 2012; likewise any payments for any Computation Period in the year 2014 shall be conditioned on the Dealership having met the Computation Year Base Amount in the year 2013, and so on. Amounts shall not be aggregated from Computation Year to Computation Year, nor from Computation Period to Computation Period. Only after completing a Computation Year that meets or exceeds the Base Amount of \$100,000 will there be an entitlement to Banning Payments to Dealership in the following year. For example, if Dealership is unable to generate \$100,000 Base Amount in year 2012 and 2013, but Dealership is able to generate said Base Amount in Year 2014, then the Dealership will be entitled to start receiving Banning Payments to Dealership in the first Computation Period of year 2015 (assuming all other conditions precedent are met, including the Base Amount condition for that Computation Period).

Should any one of the foregoing conditions precedent not be satisfied for any Computation Period, then Banning shall have no obligation under this Section 3.3 to make, and may cease making, any payments to Dealership. In any action or proceeding brought by either party to interpret or enforce the provisions of this Section 3.3, the trier of fact in such action or proceeding may refer to this paragraph to ascertain and give effect to the intention of the parties hereto.

For purposes of this Section 3.3, Banning will be deemed to have "made" a Quarterly Payment (hereinafter defined) or Adjustment Payment (hereinafter defined) to Dealership if Banning either (i) makes a cash payment to Dealership as provided in Section 3.3.4 or 3.3.5, or (ii) applies any amount due to Dealership under this Section 3.3 to reduce the amount of any then-existing Sales Tax Deficit (hereinafter defined) as provided in Section 3.3.5.

*3.3.3 Calculation of Quarterly Payments for The First Three Computation Periods of Each Computation Year.* Within thirty (30) days following the end of each of the first three (3) Computation Periods during each Computation Year, Dealership shall submit to Banning a certified copy of its report to the State of California Board of Equalization ("**BOE**") which sets forth the amount of sales tax paid to the BOE during that Computation Period arising from Dealership Activities conducted at the Existing Facility on the Property or such other sites/facilities as may be subject to this Agreement. Within twenty (20) days from the Dealership's submission of the aforementioned report, Banning shall determine the amount of Sales Tax Revenue it will receive for the subject Computation Period. Within twenty (20) days following Banning's determination of the Sales Tax Revenue for the subject Computation Period, and contingent upon Banning's determination that the Dealership generated no less than the Base Amount for that Computation Period (i.e., \$25,000), Banning shall pay to Dealership an amount equal to Banning Payments to Dealership of the Sales Tax Revenue generated during the subject Computation Period which is in excess of the Base Amount ("**Quarterly Payment**"). The fourth Computation Period of each Computation Year shall be used as an adjustment period as described in the immediately following Section 3.3.4.

3.3.4 *Year-End Adjusted Payments.* Within one hundred twenty (120) days following the end of each Computation Year, Banning will determine, based upon information furnished by Dealership and from the BOE, whether Dealership has generated a minimum of the Base Amount in Sales Tax Revenue for that Computation Year. Contingent upon Banning's determination that the Sales Tax Revenues generated during the subject Computation Year are equal to or greater than the Base Amount, Banning will then determine the year-end amount due to Dealership ("**Computation Year Compensation**"), which Computation Year Compensation is calculated as follows:

$$\begin{array}{r} \text{[Total Calculated Banning Payments to Dealership due for Computation Year]} \\ \text{Minus} \\ \text{[Computation Year Base Amount (or \$100,000)]} \end{array}$$

Computation Year Compensation will be adjusted as follows:

- a) If the Computation Year Compensation is equal to the total amount of the Quarterly Payments that were already paid to Dealership in the first three Computation Periods of the Year per Section 3.3.3, then no adjustment or payment shall be necessary.
- b) If the Computation Year Compensation is greater than the total amount of the Quarterly Payments that were already paid to Dealership in the first three Computation Periods of the Year per Section 3.3.3, then, within one hundred and sixty (160) days following the end of the Computation Year, Banning shall pay to Dealership an amount ("**Adjustment Payment**"), equal to the difference between the Computation Year Compensation and the total amount of any Quarterly Payments made by Banning to Dealership during that Computation Year.
- c) If the Computation Year Compensation is less than the total amount of any Quarterly Payments made by Banning to Dealership during that Computation Year, then the difference between the Computation Year Compensation and the total of any Quarterly Payments made by Banning to Dealership during that Computation Year shall be an obligation of Dealership to Banning. Such obligation shall be hereinafter referred to as the "**Sales Tax Deficit**".
  - i. Sales Tax Deficits may be aggregated and carried over from Computation Year to Computation Year. The term "Sales Tax Deficit" means the aggregate of any Sales Tax Deficit generated in the subject Computation Year and any Sales Tax Deficit carried over from a previous Computation Year or Years.
  - ii. Sales Tax Deficits shall be applied to offset any Quarterly Payment or Adjustment Payment which Banning may owe to Dealership in any subsequent Computation Period or Computation Year. Any amounts which Banning may owe Dealership pursuant to provisions of this Section 3.3 in any

Computation Period shall be first credited to reduce the amount of any then-existing Sales Tax Deficit, and, once that Sales Tax Deficit has been eliminated, Banning shall again commence making Quarterly Payments or Adjustment Payments to Dealership if and as warranted in future Computation Periods or Computation Years.

3.3.5 *Payment of Sales Tax Deficit or Accrued Payment Upon Expiration or Termination of this Agreement.* If, at the end of the Eligibility Period, there is a Sales Tax Deficit, then Dealership shall pay the amount of such Sales Tax Deficit to Banning within thirty (30) days from the end of such Eligibility Period. Furthermore, if this Agreement is terminated by either party as provided in Section 11.1, then (i) the Dealership shall, within thirty (30) days from such termination, pay to Banning the amount of any then existing Sales Tax Deficit that accrued prior to the date of termination, and (ii) Banning shall, within ninety (90) days from such termination, pay to Dealership any amounts due to Dealership that accrued prior to the date of termination.

3.3.6 *Contingent Obligation.* Banning's obligation to make the payments hereinabove described is expressly subject to the provisions of Sections 3.4 and 11.1 of this Agreement.

3.4 Audit/Review of Books and Records. Either party shall, upon no less than five (5) days prior written request from the other party, make the entirety of its books and records relating to the calculation and determination of that party's rights and obligations under this Agreement available at no cost to the requesting party and/or its designees (including its accountants and/or attorneys) and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any party's evidentiary rights and privileges arising pursuant to any provision of law, hereof or as otherwise ordered by any court of competent jurisdiction. Each party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other party's books and records hereof, or as otherwise ordered by the court.

3.5 Review of Dealership's Operations. City may conduct a review, upon reasonable notice, of Dealership's operations in City to verify that it is conducting its sales operation in a way that requires all Sales Tax to be allocated to City or as otherwise may be required to assure that the terms of this Agreement, including the Operating Covenants, are being fulfilled

#### 4. OPTION TO EXTEND TERM / ELIGIBILITY PERIOD

4.1 Extension of Term/ Eligibility Period. The term of this Agreement, including the Eligibility Period, may be extended no more than twice, with each possible extension being a maximum of two years. No later than sixty (60) days prior to the expiration of this Agreement and the Eligibility Period, either party may seek to exercise the option to extend this Agreement (the "**Optioning Party**") by giving the other party (the "**Non-Optioning Party**") written notice of the Optioning Party's desire to extend the Agreement. Within thirty (30) days following such notice, Non-Optioning Party shall notify Optioning Party whether it consents to the option to

extend the Eligibility Period, in which case such term shall be extended for no more than seven years, so long as no more than two such extensions are granted. The Non-Optioning Party may elect to reject a request for extension in its sole discretion.

4.2 Commencement of Extended Terms. Each extension of the Eligibility Period, if any, shall commence upon the date that marks the start of the first Computation Period following the Optioning Party's request for extension per Section 4.1. For example, if the Eligibility Period is set to expire December 31, 2018 (as it is for the initial term hereof), and if an Optioning Party timely requests extension of the Period in accordance with Section 4.1 with the request being accepted by the Non-Optioning Party, then the start of the extended term would be January 1, 2019.

## 5. AGREEMENT MAY RUN TO OTHER BANNING SITES; EXCLUSIVITY

5.1 Additional or Relocated Sites. Dealership may at its option transfer this Agreement to any site or sites within the City of Banning subject to compliance with all applicable state, federal and local laws, including without limitation the Banning Zoning and Municipal Codes. Without limiting the foregoing, it is the understanding that this Agreement may cover multiple sites of Dealership within the City of Banning if the parties are able to mutually agree to an amendment hereof incorporating and accommodating such additional/relocated sites. Either party may provide written notice to the other that the noticing party elects to first enter into good faith negotiations for a period of not-to-exceed sixty (60) business days to modify the terms of this Agreement in such a manner as to reasonably address a proposed relocation or expansion of Dealership Activities to another site.

5.2 Exclusivity. While this Agreement is in effect, Dealership shall not relocate its business operations outside the jurisdictional boundaries of the City of Banning. Moreover, Dealership shall not open or operate any other business or commercial location undertaking Dealership Activities within any area located within a ten (10) mile radius of the City of Banning jurisdictional boundaries.

## 6. LIMITS ON ASSISTANCE

6.1 Unless otherwise agreed by the parties in writing, Dealership shall not to seek "Further Assistance" (as defined herein) from the City, its Public Utilities or other affiliated governmental affiliates (collectively "City") for the Existing Facility or any additional Dealership Activities or expanded operations that Dealership may open in the City. The potential for Dealership to expand its Dealership Activities in the City is a material inducement for the City entering into this Agreement and constitutes part of the consideration received by the City under this Agreement. As such, Dealership covenants and agrees that it will not seek Further Assistance from the City during the term of this Agreement regardless of any new or expanded operations Dealership may undertake in Banning. For the purposes of this Section, "Further Assistance" shall mean any:

- a) Direct or indirect monetary payments, offsets, reimbursements or other assistance provided to Dealership, as defined herein;



b) Waiver, deferment, or payment of any City fees or charges attributable to Dealership;

c) Waiver or deferment of any condition of approval requiring installation of public improvements, or the City's funding of such public improvements, related to the Property or other real property upon which Dealership is operating or intends to operate;

d) This Section shall not be construed as to prohibit the City providing the assistance described under this Agreement or the City complying with a request by Dealership for expedited permit processing and other land use planning and land assembly services.

6.2 No Financial Assistance To Be Accepted from Other Agencies for Relocation. Unless otherwise agreed by Banning in writing, Dealership covenants and agrees for the period beginning on the Effective Date and continuing until and including the termination or expiration of this Agreement, Dealership will not, directly or indirectly, solicit or accept any Financial Assistance (as defined below) from any other public or private person or entity, to the extent such Financial Assistance is given for the purpose of causing, or would result in, either Dealership Activities being relocated from Banning's jurisdiction or termination of this Agreement. For purposes of this Section 6.2, the term "**Financial Assistance**" means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief or rebates, relief from public improvement obligations, or payment from public improvement obligations, or payment for public improvements to or for the benefit of Dealership.

## 7. CONSTRUCTION OF IMPROVEMENTS

7.1 Scope Of Improvements & Schedule Of Performance. Dealership shall improve its Existing Location by constructing approximately \$1,500,000 worth of improvements, consisting primarily of façade-related enhancements with new exterior lighting, trim fascia, pop-out details, windows, new sign and branding images, stucco, paint, and landscape improvements (the "Improvements"). The Improvements are further detailed in Dealership's Scope of Development and Conceptual Plans (Exhibit "E") and will be consistent with the plans and permits approved by the City pursuant to Section 7.3. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between the narrative description of the Improvements in this Agreement (including Exhibit "E") and the approved plans and permits, the approved plans and permits shall govern.

7.1.1 *Critical Construction Deadlines.* Once Improvement construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Excusable Delay (defined hereinafter). Dealership shall keep Banning informed of the progress of construction and submit to Banning written reports of the progress of the construction when and in the form requested by Banning. Critical Improvement construction deadlines are set forth in Exhibit "F" hereto.

7.1.2 *Extensions of Time.* In addition to delays in the Improvement deadlines as may be permitted due to Excusable Delays, it is understood that the foregoing critical deadlines are subject to all other terms and conditions set forth in this Agreement, and as will be more thoroughly set forth in the future. The critical construction deadlines may be altered or amended by written agreement signed by both parties. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Banning shall have the authority to approve extensions of time without City Council action if such extension does not exceed a cumulative total of 180 days.

7.2 Dealership Responsible for Improvement Costs. Dealership is responsible for paying all costs for the Improvements unless otherwise provided herein. Improvement costs include the total Improvement construction costs, all site preparation costs, all infrastructure costs, building permits and development fees, all design and consultant costs, all financing costs, all fixtures and equipment for the facility, and all other costs related to the Improvements of any nature whatsoever.

7.2.1 *Prevailing Wages.* Although the parties hereto believe that Dealership will bear all costs of the Improvements and no financial assistance or public monies are being provided to Dealership with respect to the Improvements, Dealership fully accepts the risk that construction or development of the Improvements may qualify as a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("**Prevailing Wage Law**"), such that it would cause Dealership to be required to pay prevailing wages for any aspect of the development. Dealership hereby represents and warrants that the Improvements are not subject to Prevailing Wage Law because no funding sources for the Improvements will trigger the application of Prevailing Wage Laws. Notwithstanding the foregoing, the Dealership fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Improvements. To this end, Dealership acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Dealership or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Dealership shall indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The City makes no representation that any construction to be completed by Dealership is or is not subject to Prevailing Wage Law.

7.2.2 *Dealership's Financial Statements.* Dealership agrees to provide the City with documentation and financial statements to the end of demonstrating that Dealership can fund the total projected/estimated Improvement costs through, cumulatively, the following sources: (i) Dealership equity, and/or (ii) private financing from financial institutions. Such financial statements shall include statements from financial institutions with whom Dealership conducts business evidencing their willingness to provide the financing required hereunder. If Dealership elects to self-fund the construction of the Improvements, Dealership may satisfy this obligation by providing City with a letter evidencing facts demonstrating Dealership's ability to self-fund the Improvements.

### 7.3 Improvement Plans.

7.3.1 *Proposed Improvements' Consistency With Plans and Codes.* City warrants and represents that the City of Banning General Plan, and Zoning Ordinance permit City's proposed development, and construction, operation, and use of the Existing Facility as provided in this Agreement, including without limitation the Improvements as described in Exhibit "E", subject to (i) approval of this Agreement, and (ii) those development approvals yet to be obtained, including site plan review, if applicable. It is expressly understood by the parties hereto that City makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City. The City and any other governmental body with jurisdiction over the Property reserve full police power authority over the Property. However, City shall reasonably cooperate with Dealership in procuring the foregoing approvals. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

7.3.2 *Dealership Efforts To Obtain Approvals as May be Needed.* Dealership shall exercise its commercially reasonable efforts to timely submit all documents and information necessary, if any, to obtain any required development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Improvements, Dealership shall comply with all applicable development standards in the City of Banning Municipal Code and shall comply with all building codes, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

7.4 Applicable Laws. Dealership shall carry out the construction of the Improvements in conformity with all applicable laws, including all applicable federal and state labor laws.

## 8. RESTRICTIONS ON TRANSFER

8.1 Transfers Require Approval. Dealership shall not Transfer this Agreement or any of Dealership's rights hereunder, or any interests in this Agreement, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City which consent shall not be unreasonably withheld. In considering whether it will grant written approval to any assignment by Dealership of its interests herein, which assignment requires City approval, City shall consider factors such as (i) whether Dealership operations within the City would be jeopardized; (ii) the financial strength, reputation and capability of the proposed assignee to perform Dealership's obligations hereunder; and (iii) the proposed assignee's ability to generate a similar fiscal return to City.

No assignment or transfer by Dealership of all or any portion of its interest in this Economic Development Agreement (including without limitation an assignment or transfer not requiring City approval hereunder) shall be deemed to relieve Dealership or any successor party from any obligations under this Agreement with respect to the performance hereof. In addition, no attempted assignment of any of Dealership's obligations hereunder shall be effective unless

and until the successor party executes and delivers to City an assumption agreement in a form reasonably approved by the City assuming such obligations.

8.2 Exceptions. The foregoing restrictions on transfers shall not apply to any of the following:

a) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

b) A conveyance of this Agreement to any entity that is an Dealership Affiliate. "Dealership Affiliate" shall mean any entity which owns or controls Dealership, to any entity owned or controlled by Dealership, to any entity owned or controlled by or affiliated with any entity which owns or controls Dealership, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Dealership shall be a party, or to an entity to which all or substantially all of the assets of Dealership have been sold.

c) Transfers of ownership or control interest between members of Dealership's immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of Dealership's immediate family, or among the entities constituting Dealership.

8.3 Release Of Dealership. City's consent to a Transfer shall not be deemed to release Dealership of liability for performance under this Agreement unless such release is specific and in writing executed by City. Upon the written consent of City to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Dealership under this Agreement by the assignee, Dealership shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Dealership is in Default under the terms of this Agreement prior to said Transfer.

8.4 Dealership To Pay Transfer Costs. Dealership will pay Cities their reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any Transfer.

## 9. LEGAL LIABILITIES; INDEMNITIES; DEFENSE OF ACTIONS

9.1 Indemnification and Defense of Third-Party and SBE Actions; 50%/50% Allocation of Such Indemnity Costs. The parties shall mutually defend and indemnify each other, their officers and employees from Claims or Liabilities arising from this Agreement including, but not limited to, (i) those concerning the validity or enforceability of this or any related agreement between the parties, (ii) those arising from the performance of any party of the terms of this or any related agreement between the parties, (iii) those brought by any third party

and arising hereunder. The responsibility of each party will be to pay their respective share as provided in Sections 9.2.4 and 9.2.5 of the Indemnity Costs hereunder. The foregoing shall not apply to Claims or Liabilities caused by the sole negligence of a party, its officers or employees. This Section 9.1 is only applicable to third-party Claims or Liabilities brought against City and/or Dealership; the provisions of this Section are not applicable to any claims or liabilities which Banning and Dealership may have against each other.

9.1.1 *Defense of SBE Proceedings.* The Cities and Dealership agree that, should the SBE question the correctness of the allocation or determine that there has been an improper allocation to the City, City shall defend such allocation in all SBE administrative proceedings. For purpose of this paragraph, administrative proceedings include all SBE meetings, conferences and appeals before SBE Board Members. Dealership will cooperate fully with the Cities and their attorneys, and shall have the right to be present at and participate in all SBE administrative proceedings.

9.1.2 *Indemnity/Defense of Other Legal Actions.* The indemnity obligations of the parties hereunder extend to the Indemnity Costs of all other Claims or Liabilities arising hereunder of any nature whatsoever arising out of or in connection with this Agreement, the Original Agreement and/or any changes in law as they may apply to this Agreement.

9.1.3 *Appointment of Counsel; Deposit for Costs.* The City shall provide Dealership with notice of the pendency of any third-party action initiated to challenge the rights and obligations established under this Agreement. Depending on the nature of the proceeding, the parties may utilize either the City Attorney's office or may elect to retain separate legal counsel. The parties may mutually agree on a budget and may assign differing roles to legal counsel. Based on the budget, the parties may establish a defense fund and require the deposit of funds with the City in accordance with the shares under Section 9.1.4 so that generally legal costs shall be covered for a period of at least sixty (60) days in advance of the need for expenditure. The parties will continue to make deposits as needed. If any party shall fail to make their deposit, the action may be abandoned by the performing party without liability to the defaulting party. The obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. Each party shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Agreement, in which case the party not wishing to abandon the case shall be responsible for the full costs of the action. In the event of an appeal, or a settlement offer, the parties shall confer in good faith as to how to proceed. In that event, Dealership shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to City beyond the payment of those costs. Notwithstanding Dealership's indemnity for Claims or Liabilities, the City retains the right to settle any claims or litigation brought against it in its sole and absolute discretion and Dealership shall remain liable except where Dealership opposes the settlement. In such case the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to Dealership.

9.1.4 *50/50 Sharing of Indemnity Costs.* The Dealership share of Indemnity Costs shall be 50% of the Indemnity Costs, as will the City's share of Indemnity Costs.

9.1.5 *Withholding City Payment for Indemnification.* City may deduct from any Covenant Payment any amount payable to Dealership (i) any amounts which are necessary to compensate the City for any losses, costs, liabilities, or damages suffered by the City including due to Dealership's failure to perform its indemnity obligations hereunder, and/or (ii) any and all amounts for which the City may be liable to third parties, by reason of Dealership's acts or omissions in performing or failing to perform Dealership's obligation under this Agreement. In the event that any claim is made by a third party or otherwise, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due an amount sufficient to cover such claim. Said withheld monies will be held in a separate account accruing interest at the same rate as Banning's general investments (without liability because of such withholding or interest rate). The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Dealership to insure, indemnify, and protect Cities as elsewhere provided herein. In the event City becomes aware of any such claim, it shall give Dealership written notice of the basis of such claim including any documentation in connection therewith, and Dealership shall have twenty (20) days to provide a written response and City shall have ten (10) days thereafter to advise Dealership of its action on such claim prior to withholding any amount. If Dealership continues to dispute the withholding, City shall retain the funds until the dispute can be resolved. The claim must be actual and not merely potential or speculative, for example the filing of an action before the SBE, the filing of a lawsuit, the failure to pay legal fees which have been incurred pursuant to the indemnity obligation, or similar matter is considered "actual."

9.1.6 *Survival.* All indemnity provisions set forth in this Agreement shall survive termination or expiration of this Agreement.

9.2 Changes in Law. Changes in law that materially undermine the intent and purposes of this Agreement may be a basis for termination or negotiated modification hereof.

9.2.1 City and Dealership acknowledge that as of the Effective Date of this Agreement, the California legislature has adopted certain legislation commonly known as the "triple-flip" which would divert to the State of California up to one-quarter (1/4) of the Sales Tax Revenue which would otherwise be payable to the City pursuant to the Sales Tax and Use Tax Law as it existed prior to enactment of the above-referenced legislation. City and Dealership acknowledge that such legislation will cause a reduction of up to approximately twenty-five percent (25%) of the Sales Tax Revenues which would otherwise be allocable to City and that such reduction will cause a corresponding effect. Furthermore, City acknowledges that it is possible that the legislation described above, or some alternative legislation (whether or not similar to the "triple flip"), may be enacted and effective during one or more subsequent years during the term hereof and may materially and negatively impact the amount of Sales Tax Revenues and, accordingly, Covenant Payments. If future actions of the California legislature with respect to the allocation of Sales Taxes to cities will substantially frustrate the purposes and intent of this Agreement, then either party shall have the right, without obligation, to terminate this Agreement by sending a Termination Notice as described hereinabove. Alternatively, the parties may mutually elect to enter into good faith negotiations for a period of not-to-exceed sixty (60) business days to modify the terms of this Agreement in such a manner as to reasonably address any changes in law. Dealership hereby agrees to indemnify, defend, and hold harmless City, its directors, officers, employees, agents, representatives, heirs, and successors from and

against any and all Indemnity Costs arising from any application or impact of the triple flip or some alternative legislation (whether or not similar to the "triple flip") upon the terms, conditions or implementation of this Agreement. Changes in law for purpose of this Section include new judicial interpretations or applications of law as wells as legislative enactments.

9.2.2 In addition to, and without waiving or limiting the foregoing, the parties shall share 50% / 50% all attorneys' fees and Indemnity Costs, foreseeable or unforeseeable, directly or indirectly, arising from changes in law.

9.2.3 *Recapture of City Payments.* If at any time during or after the term of this Agreement, the SBE determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City (an "improper allocation"), and if SBE requires repayment of, offsets against future Sales Tax Revenues, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Dealership shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Dealership which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Dealership fails to make such repayment within thirty (30) calendar days after the City's written demand, then such obligation shall accrue interest from the date of City's original written demand at the then maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid.

## **10. DEFAULTS & ENFORCEMENT**

10.1 Notice & Cure. A Non-Defaulting Party in its discretion may elect to declare a default under this Economic Development Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("**Defaulting Party**") to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure ("**Default Notice**"). The Defaulting Party shall be deemed in "**Default**" under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) calendar days after the date of such notice ("**Cure Period**"). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

- (a) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the thirty (30) calendar day period;
- (b) Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the Default;
- (c) Promptly commences to cure the Default within the thirty (30) calendar day period;

(d) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

(e) Diligently prosecutes such cure to completion.

then the Defaulting Party shall not be deemed in breach of this Agreement.

10.2 Abatement of Covenant Payments. If Dealership fails to cure, or commence to cure, a Default as provided above, then Banning's obligations to make any Covenant Payments, if and as warranted by the provisions of Section 3.3, shall be abated and forever forgiven, discharged and excused for all periods of time during which the Default continues to exist ("**Abatement Period**") If, however, Dealership cures, or commences to cure, such Default as provided in the preceding paragraph, Banning shall continue to make such Covenant Payments if and as warranted by Section 3.3. Furthermore, if Banning's obligation to make Covenant Payments is abated, forgiven, discharged and excused by reason of Dealership's failure to cure or commence such cure within said thirty (30) day period, Banning's obligations shall nonetheless be reinstated, and Banning shall make Covenant Payments if and as warranted by said Section 3.3, upon Dealership's cure of the default; provided, however, that any Sales Tax Revenues generated during the Abatement Period shall not be considered in determining whether Banning is obligated to make Covenant Payments pursuant to Section 3.3.

10.3 Termination. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any Default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement for cause ("**Termination Notice**"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate this Agreement as the Nondefaulting Party elects to terminate within thirty (30) calendar days and state the reasons therefor (including a copy of any specific charges of Default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Nondefaulting Party's election to terminate Agreements will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 10.3.1:

10.3.1 Except as otherwise provided herein, upon such termination all executory obligations under this Agreement that accrue or arise subsequent to the date of termination shall also terminate, but obligations that have accrued or arisen prior to such termination shall remain in full force and effect. Without limiting the generality of the foregoing, no termination of this Agreement shall operate to release or discharge Dealership from any obligation to refund to City any overpaid Covenant Payments or other monies owing to City. In addition, in the event that a court of competent jurisdiction determines the Sales Tax Revenues were improperly received by Banning and orders Banning to pay such improperly received Sales Tax Revenues as damages to a third party, and Dealership received Covenant Payments attributable to such improperly received Sales Tax Revenues, Dealership shall repay such Covenant Payments to City within thirty (30) calendar days after written demand by City.

10.4 Rights & Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party



of one or more of its 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.

10.5 No Waiver. Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any Default shall not operate as a waiver of any Default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

## 11. GENERAL PROVISIONS

11.1 Termination. Either party may, in its sole and absolute discretion, terminate this Agreement, without cost, expense, or liability except as otherwise provided herein. Amounts accrued as due and payable under this Agreement prior to the termination do remain as a liability of the party owing such amounts. Notice of intent to terminate this Agreement without cause pursuant to this Section shall be given in the same manner as a Termination Notice, as hereinabove described.

11.2 Tax Consequences. Dealership acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

11.3 Rights Not Granted Under Agreement. This Agreement is not, and shall not be construed to be, a Development Agreement under Government Code Section 65864 et seq., or a Disposition and Development Agreement under Health and Safety Code Section 33000 et seq. This Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by Banning concerning any Existing Facility, project, development, or other construction by Dealership in the City of Banning. This Agreement does not, and shall not be construed to, exempt Dealership in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance, operation, or otherwise of any Existing Facility, project, development or other construction within the City of Banning. This Agreement does not, and shall not be construed to, exempt Dealership from the application and/or exercise of Banning's power of eminent domain, or its police power including, but not limited to, the regulation of land uses, and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

11.4 Consent. Whenever consent or approval of any party is required under this Agreement, that party shall not unreasonably withhold such consent or approval unless otherwise allowed by specific provision of this Agreement.

11.5 Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, without regard to its conflicts of laws principles. Any action or proceeding commenced to interpret, enforce, or which is in any way related to this Agreement, including, without limitation, the Operating Covenant, shall be commenced and prosecuted in the appropriate court in the County of Riverside, California. Each party hereby irrevocably consents to the personal jurisdiction of the court in such matter. Each party hereby irrevocably waives, to the maximum legal extent, the benefit of any provision of law providing for change of venue to any other court or jurisdiction for any reason whatsoever, including, without limitation, any diversity of citizenship between Dealership and Banning, or the fact that Banning is a party to this Agreement. Without limiting the generality of the foregoing,

11.6 Notices. Any notice, demand, request, consent, approval or communication that any party desires or is required to give to any other party under this Agreement shall be in writing and either served personally or sent by regular mail and shall be addressed to such party at the addresses set forth below. Any party may change its address by notifying the other parties of the change of address.

Dealership's address: Diamond Hills Auto Group, Inc.  
Attn: General Manager  
4661 W Ramsey Street  
Banning CA 92220

With a copy to: Shulman Hodges & Bastian LLP  
Attn: Ronald S. Hodges  
26632 Towne Centre Drive Suite 300  
Foothill Ranch, CA 92610

Banning's address: City of Banning  
Office of the City Manager  
99 East Ramsey Street  
Banning, California 92220

With a copy to: Aleshire & Wynder  
Attn: Banning City Attorney  
18881 Von Karman Avenue, Suite 1700  
Irvine, California 92612  
(949) 223-1170

11.7 Amendment or Modification. No amendment, change, modification, alteration or termination of this Agreement shall be made except pursuant to written instrument signed by Dealership and Banning. The City Manager is authorized to make minor, non-substantive changes to this Agreement on behalf of Banning without the need for formal City Council approval.

11.8 Entire Agreement; Good Faith Negotiations. This Agreement contains all of the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise,

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regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

The parties acknowledge that this Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement. In any action or proceeding to interpret and/or enforce this Agreement, the trier of fact may refer to extrinsic evidence not in direct conflict with any specific provision of this Agreement to ascertain and give effect to the intent of the parties hereto.

11.9 No Third Party Beneficiaries. This Agreement is intended to and shall benefit only Banning, the Dealership, and their permitted successors and assigns. No person or entity not a party to this Agreement is intended to, nor shall it be, benefited by either Banning's or the Dealership's performance of their respective obligations under this Agreement. No person or entity not a party to this Agreement shall have any rights or causes of action against either Banning or the Dealership as a result of either Banning or the Dealership's performance or nonperformance under this Agreement.

1.1 Time of the Essence; Force Majeure. Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default where delays or Defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority litigation; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of City shall not excuse performance by City); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "Excusable Delay"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Excusable Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) calendar days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim. The following shall not be considered as events or causes beyond the control of Dealership, and shall not entitle Dealership to an extension of time to perform: (i) Dealership's inability to negotiate in good faith, or (ii) conditions outside the control of Dealership that decrease the profitability of Dealership operations within the City, or (iii) any inability of Dealership to obtain or maintain financing for its operations. Times of performance under this Agreement may also be extended by mutual written agreement by the parties.

The parties hereto expressly acknowledge that changes in either general economic conditions or changes in the economic assumptions of any of them which may have provided a basis for entering into this Agreement, and which occur at any time after the execution of this Agreement, are not Excusable Delays and do not provide any party with grounds for asserting

the existence of a delay or excuse in the performance of any covenant or undertaking which may arise under this Agreement. Each party expressly assumes the risk that changes in general economic conditions, or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such party under this Agreement, but that such inconvenience or hardship is not an Excusable Delay and does not excuse the performance by such party of its obligations under this Agreement.

11.10 Attorneys Fees. In the event that either party to this Agreement brings an action or proceeding against the other to interpret or enforce this Agreement, or which in any way arises out of or as a result of the existence of this Agreement, the prevailing party in that action or proceeding, in addition to all other relief to which it may be entitled, shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorneys fees and costs of litigation. Recoverable costs and expenses include those incurred on appeal and in the enforcement of any judgment.

11.11 Authority to Execute. Each party is authorized to do business in California, has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and, thereby, and by proper action duly authorized the execution and delivery of this Agreement. 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 THE FOLLOWING PAGE]

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year written below:

Dated: \_\_\_\_\_, 2012

**CITY**

CITY OF BANNING, a California general law city

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

**ATTEST**

\_\_\_\_\_  
Marie Calderon, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David J. Aleshire, City Attorney

Dated: \_\_\_\_\_, 2012

**DEALERSHIP**

DIAMOND HILLS AUTO GROUP, INC., a  
California Corporation

By: \_\_\_\_\_  
Christopher Leggio, President

By: \_\_\_\_\_  
Loretta Holtz, Secretary/Treasurer

**ATTACHMENT 3**  
**DIAMOND HILLS AUTO GROUP**  
**ENHANCEMENT & IMPROVEMENT RENDERING**

# COMING SOON



**ATTACHMENT 4**  
**RESOLUTION NO. 2012-59**



## **RESOLUTION NO 2012-59**

### **A RESOLUTION OF THE CITY OF BANNING, CALIFORNIA, ENTERING INTO AN ECONOMIC DEVELOPMENT ASSISTANCE PROGRAM AND AUTHORIZING AN AMENDED AND RESTATED OPERATING COVENANT WITH DIAMOND HILLS AUTO GROUP, INC.**

**WHEREAS**, On June 12, 2012, the City enacted an ordinance adding Chapter 3.28 to the Banning Municipal Code adopting a comprehensive set of economic development incentives and programs to promote the development of Banning in the face of unique environmental constraints, to create jobs and to preserve the sound fiscal basis of the City in light of the elimination of redevelopment in California. To accomplish the purposes provided in the ordinance, the City and its associated and subordinated entities have the power to carry out policies, plans and programs, to enact measures, to enter into agreements, and to loan, grant, fund, or finance projects which will provide public benefit and protect the public health, safety and welfare of the community. These programs may be carried out singly or in combination in a manner to promote the economic development objectives of Chapter 3.28, with Section 3.28.020(F) specifically providing for the use of "Economic Development Agreements" for sales taxes, transient occupancy taxes, utility taxes or other taxes to be shared with the generator, and rebates or waivers of franchise fees, business license fees, development impact fees, or other revenue sources but any such tax may only be imposed in accordance with law; and

**WHEREAS**, DIAMOND HILLS AUTO GROUP, a California Corporation ("Dealership") operates a Buick, Chevrolet, GMC automobile sales franchise in the City of Banning at 4661 W. Ramsey Street (the Existing Facility"); and

**WHEREAS**, On September 27, 2005, the City and Dealership entered into an "Agreement Regarding Operating Covenant" (the "Original Agreement") whereby the City agreed to (i) Pay the Dealer \$2,000,000 over a ten year period, or until September 2015; (ii) Provide the parties an option to extend the Original Agreement by ten years, or until September 2025, and create a new ceiling of \$5,000,000 if the Dealer added a maximum of two new dealer franchises to the existing dealership; and (iii) Pay the Dealer a sliding percentage scale of sales tax as long as the City maintained a minimum threshold of \$200,000 per year in sales tax by the Dealer. The percentage split ranged from 80% in Year 1 and decreased 5% per year until the percentage split was 50% in Year 7. Essentially, therefore, the Original Agreement contemplated a tax-sharing arrangement between Banning and Dealership by which the parties would eventually split the City's sales tax revenue generated from the Dealership's Banning operations on a 50/50 basis; and

**WHEREAS**, Since mid-2006, the U.S. economy has been suffering a "Great Recession"—the worst economic conditions since the Great Depression of the 1930's. As the economy struggles to recover cities are facing an especially difficult time attracting business and

expanding business in their respective communities. The effects of the Recession have been profound on Banning and communities in the region. Although national unemployment rates are improving slowly, California's job recovery is still a major problem. The May 2012 unemployment rate in California was 11%, while the national unemployment rate was 8.1%. The unemployment rate in Riverside County in May 2012 was 12.8%, while the unemployment rate in Banning was 14.6%, which is 6.5% above the national rate. Economists believe that these unemployment rates are understated, since many individuals are underemployed or have stopped actively searching for jobs; and

**WHEREAS**, The Original Agreement was negotiated and structured pursuant to certain economic assumptions that were thwarted by the unusual circumstances of the Great Recession, and this has in turn substantially frustrated the ability of the parties to share sales tax revenues in the manner originally contemplated. Therefore, Dealership has requested the City to amend the Original Agreement as follows: (i) To remove the ceiling of \$2,000,000 and ten years as outlined in the Original Agreement; (ii) To establish a minimum sales tax threshold of \$25,000 per quarter or \$100,000 per year before the City and the Dealership would split 50% of the sales tax generated over that threshold; (iii) To establish a seven year term with two option periods each having a seven year time frame potentially adding fourteen additional years to the term; (iv) To condition the Dealership to remain in the City of Banning during the term of the Amended Agreement, which includes operating out of their existing location at 4661 W. Ramsey Street, relocating to a new location within the City, or operating multiple locations within Banning; (v) To condition the Dealership to provide various upgrades and improvements to their Existing Facility, provide new improvements to another location in Banning, or provide improvements to multiple locations in Banning; and (vi) To make the contractual obligations and rights terminable at the will of either party at any time. Without such amendments to allow actual sharing of sales tax revenues between the City and Dealership, the Dealership could potentially be forced to cease operations in the City and/or would be unable to make upgrades and improvements to its Existing Facility (or any other location in Banning) as needed to remain competitive and viable; and

**WHEREAS**, To implement the above-described revisions to the Original Agreement, Council is now presented with the "AMENDED & RESTATED AGREEMENT FOR PURCHASE OF OPERATING COVENANT ("Agreement") attached hereto as Exhibit "A"; and

**WHEREAS**, The parties believe that it is in the public interest to retain the operations of Dealership in the City via the Agreement for the following reasons: (i) The Dealership is the only new vehicle dealer in the City, thus providing a unique service that is not fulfilled by any other business in the City; (ii) The Dealership generates an average of 10% of the City's total sales tax revenues in any given year and is thus one of Banning's most significant tax-generating business; (iii) The Dealership currently has forty-nine (49) full time employees and seven (7) part time

employees, and the Dealership is anticipating adding approximately seven (7) new positions by the end of this year; (iv) Since 2005, the Dealership has provided enhancements and improvements to its existing location and has supported numerous non-profits, businesses, and City-related events during this time period; and (v) if the Dealership were to close, it would leave vacant a site that otherwise may be very difficult to utilize; and

**WHEREAS**, Under the City's economic development program under Chapter 3.28 of the Banning Municipal Code, the Council must make the following findings to adopt the agreements for implementing the Project:

A. The Project will meet the conditions of Section 3.28.050 by (i) alleviating persistent conditions of blight; or (ii) creating new, or retaining, substantial revenues to the City and meeting the minimum thresholds for positive fiscal impact on City (i.e., at least \$100,000 in annual revenues to City); or (iii) the Project will produce unique community amenities, especially as the Dealership is the City's only new automobile dealership.

B. The Project maintains unique private facilities not otherwise existing in Banning.

C. The Project has received all other discretionary entitlements required under the Zoning Ordinance, including any environmental review required by the California Environmental Quality Act.

D. The Project will not have an adverse effect on surrounding properties or the permitted uses thereof. The development of the project must not have a substantially adverse impact on traffic, or on surrounding properties or on the community generally.

The economic development agreement contains provisions to assure the continued operation of the Project consistent with Chapter 3.28 and providing for the enforcement of the covenants contained therein by City; and

**WHEREAS**, The City Council has conducted a public hearing as required by BMC Section 3.28.080(A); and

**WHEREAS**, The City Council has reviewed the 3.28 Summary Report and considered all oral and written testimony relating during the public hearing, as well as related to this matter.

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

**Section 1:** The above Recitals are true and correct and incorporated into the terms and findings of this Resolution by this reference.

**Section 2:** Based on the foregoing recitations and all evidence presented to and considered by the City Council, including but not limited to the 3.28 Summary Report the findings of which are incorporated herein, the City Council hereby finds and determines:

A. The Project will meet the conditions of Section 3.28.050 by (i) alleviating persistent conditions of blight; or (ii) creating new, or retaining, substantial revenues to the City and meeting the minimum thresholds for positive fiscal impact on City (i.e., at least \$100,000 in annual revenues to City); or (iii) the Project will produce unique community amenities, especially as the Dealership is the City's only new automobile dealership. The Project meets one or more of the above conditions:

- (1) The Project will avoid creating a blighted condition by retaining and enhancing a use at the existing location where a property owner would find it difficult to utilize or renovate for other uses. The existing buildings on the site are specifically geared toward an auto dealership use and would be difficult to market and re-use. The Project will serve to strengthen Banning's land use and social structure, and will alleviate economic and physical blight within the community.
- (2) The Project will retain one of Banning's most significant tax-generating businesses. The Dealership represents approximately 10% of the City's annual sales tax generation and the Dealership will continue to provide the City with equivalent revenues for the next seven years. The City also projects that revenues generated by the Dealership will continue to increase as the economy recovers and if the Dealership expands its footprint in the City. Because the Agreement sets a threshold of \$100,000 annual sales tax generation by the Dealership, the Agreement meets the threshold set forth in BMC 3.28.050(D).
- (3) The Project will continue to be significant to the community's character and quality of life. The Project retains the City's only existing new car dealership. The Project is vital and in the best interest of the City and will serve the health, safety, and general welfare of the citizens of Banning and the region.

B. The Project has received all other discretionary entitlements required under the zoning ordinance, including any environmental review required by the California Environmental Quality Act: The project includes façade related enhancements that consist primarily of new exterior remodeling, lights, trim, fascia pop out details, windows, signage and branding images, stucco, paint, and landscaping. The improvements will be consistent with the recent improvements the Dealer made at their Upland, California location. Should the Dealer relocate or expand to another Banning site, the appropriate environmental requirements would be imposed on the project.

C. The Project will not have an adverse effect on surrounding properties or the permitted uses thereof. The development of the Project will not have a substantially adverse impact on traffic, or on surrounding properties or on the community generally: The proposed enhancements and improvements outlined for the Project are on-site and will not create an adverse impact on traffic, surrounding properties, or the community in general.

D. The Agreement contains provisions to assure the continued operation of the Project consistent with Chapter 3.28 and providing for the enforcement of the covenants contained therein by the City: The Agreement obtains from Dealership a commitment to its continued operation in Banning for at least the next seven years, with two possible two-year extensions. Breach of that commitment affects a legally-enforceable default of the City's Agreement with the Dealership.

**Section 3:** The City Council hereby approves the Agreement at Exhibit "A" hereto and authorizes its execution in accordance with the foregoing findings.

**Section 4:** The City Manager is hereby authorized to take all actions necessary to effectuate and approve the Agreement and the transactions described in this Resolution.

**Section 5:** The City Clerk shall certify to the passage and adoption hereof.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Banning, this 24<sup>th</sup> day of July 2012.

Adopted and approved this 24<sup>th</sup> day of July 2012.

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Don R. Robinson, Mayor  
City of Banning

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

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

**ATTEST:**

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Marie A. Calderon, City Clerk

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Resolution No. 2012-59 was adopted by the City Council of the City of Banning, at a regular meeting on the 24<sup>th</sup> day of July 2012, and that the same was adopted by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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