

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

November 13, 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 Sitting in Its Capacity of a Successor Agency and the Banning Housing Authority.*

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

**I. CALL TO ORDER**

- Invocation – Pastor Richard Szydlouski, Mountain Avenue Baptist Church
- Pledge of Allegiance
- Roll Call – Council Members Botts, Franklin, Hanna, Machisic, Mayor Robinson

**II. REPORT ON CLOSED SESSION**

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

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

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

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

## PRESENTATIONS:

1. Proclamation Presentation to Logan Purvis . . . . . 1
2. Announcement of New Employees – (ORAL)  
James Tarwick and Brandon Robinson
3. Centennial Update (ORAL)

## **IV. CONSENT ITEMS**

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

### **Motion: That the City Council approve Consent Item 1 through 14**

**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 – 08/28/12 (Workshop) . . . . . 2
2. Approval of Minutes – Special Meeting – 08/28/12 (Closed Session). . . . . 14
3. Approval of Minutes – Regular Meeting –08/28/12 . . . . . 15
4. Approval of Minutes – Special Meeting – 09/11/12 (Closed Session). . . . . 24
5. Approval of Minutes – Regular Meeting –09/11/12 . . . . . 26
6. Approval of Minutes – Special Meeting – 10/23/12 (Closed Session). . . . . 35
7. Approval of Minutes – Regular Meeting –10/23/12 . . . . . 38
8. Adoption of Ordinance No. 1457 – 2<sup>nd</sup> Reading: An Ordinance of  
the City Council of the City of Banning, California, Amending  
Ordinance No. 1442 Setting Forth a Procedure of Mayor and Other  
Positions Held by Councilmembers . . . . . 49
9. Accept Grant of Easement from O'Donnell Group, Parcel 1/  
APN 532-110-010 and parcel 2/APN 532-110-008 for Proposed  
Water Well Exploration/Drilling Project . . . . . 54
10. Resolution No. 2012-14, Authorizing the acceptance of a Mass Care  
Trailer from the County of Riverside . . . . . 59
11. Resolution No. 2012-84, Approving the Projects for Fiscal Year  
2013-2014 Community Development Block Grant (CDBG) Program . . 82
12. Resolution No. 2012-85, A Resolution of Intention to Approve an  
Amendment to the Contract between the Board of Administration of  
the California Public Employees' Retirement System (CalPERS)  
and the City Council for the City of Banning. . . . . 91
13. Resolution No. 2012-86, Approving the Reimbursement Agreement  
Between the City of Banning and MCI Communications Services,  
Inc. for Relocation of Facilities at a Portion of the Union Pacific  
Railroad Right of Way for Project No. 2006-05, Sunset Avenue  
Grade Separation . . . . . 95

14.	Resolution No. 2012-87, Approving a Contract Services Agreement with TruGreen Landcare for Landscaping Maintenance Services for An Amount not to exceed \$12,530.00. ....	107
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- Open for Public Comments
- Make Motion

## V. REPORTS OF OFFICERS

1.	City Business Permit for Valley Medical Transport, LLC Staff Report .....	111
	Recommendation: <b>That the City Council review and consider approving a City Business Permit for Valley medical Transport, LLC to provide non-emergency medical transport services within the City Limits of Banning.</b>	
2.	Approval of Exclusive Negotiations Agreement by and Between the City of Banning and the Fairview Holdings, S.A., LLC Staff Report .....	112
	Recommendations:	
	1) <b>That the City Council approve the Exclusive Negotiation Agreement (“ENA”) to be in substantially the form shown in the agenda package and authorize the City Manager and the City Attorney to finalize the ENA to the final executable form; and</b>	
	2) <b>Direct staff to continue discussion with the representatives of Fairview Holdings, S.A., LLC and work towards, in good faith, the culmination of a development agreement or equivalent agreement(s), that may provide for future development of the area in and around the Banning Municipal Airport only after said agreements have been considered and approved by the City Council after a public hearing in accordance with the law.</b>	
3.	Resolution No. 2012-89, Establishing the Intergovernmental Communications and Advocacy Committee Staff Report .....	168
	Recommendations: <b>That the City Council adopt Resolution No. 2012-89.</b> <b>Hujh8n6598</b>	

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

## **VI. CONSENT ITEMS**

1. Resolution No. 2012-13 UA, Approving the Second Amendment to The Professional Services Agreement with Geoscience Support Services, Inc. of Claremont, CA to include additional services in an Amount of \$50,000.00 for a total contact amount "Not to Exceed" \$250,000.00 ..... 173

## **ADJOURN JOINT MEETING OF BANNING CITY COUNCIL AND THE BANNING UTILITY AUTHORITY AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY AND THE BANNING HOUSING AUTHORITY.**

## **VII. CONSENT ITEMS**

1. Contract Services Agreement with Riverside Housing Development Corporation ("RHDC") to Implement the Housing Exterior Rehabilitation Program ..... 177
  - a) Resolution No. 2012-14 SA, Approving a Contract Services Agreement with Riverside Housing Development Corporation (RHDC) and Authorize the City Manager to Execute the Contract to Implement the Housing Exterior Rehabilitation Program.
  - b) Resolution No. 2012-05 HA, Approving a Contract Services Agreement with Riverside Housing Development Corporation (RHDC) and Authorize the City Manager to Execute the Contract to Implement the Housing Exterior Rehabilitation Program .

## **REPORTS OF OFFICERS**

1. Ramsey Villa, LLC (225 W. Ramsey St.) – Extension of Time to Complete Leasing of the Apartments and Retail/Restaurant Space. Staff Report ..... 211

### **Recommendations:**

- 1) **That the Successor Agency adopt Resolution No. 2012-15 SA, Approving an extension of time to complete the leasing of the apartments and the commercial tenant space at Ramsey Villa, LLC based on the specified schedule as shown in the Second Amendment to the Agreement.**
- 2) **That the Housing Authority adopt Resolution No. 2012-06 HA, Approving an extension of time to complete the leasing of the apartments and the commercial tenant space at Ramsey Villa, LLC based on the specified schedule as shown in the Second Amendment to the Agreement.**



**Adjourn Joint Meeting and reconvene the regular City Council Meeting.**

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

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

**IX. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials

**X. ADJOURNMENT**

The November 27, 2012 City Council Meeting will be cancelled due to the Thanksgiving Holiday and the next Regular City Council Meeting will be held on Tuesday, December 11, 2012.

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

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

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

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



## PROCLAMATION

*WHEREAS, the accomplishments and achievements of Logan Purvis deserve recognition and commendation; and*

*WHEREAS, currently a senior at Laurel Springs School in Ojai, California, Logan Purvis is a member of the National Society of High School Scholars and the National Honor Society for the Laurel Springs School Chapter; and she also has demonstrated initiative and leadership as School Treasurer; and*

*WHEREAS, committed to success, Logan Purvis sought to enhance her academic curriculum by attending Mt. San Jacinto College (MSJC), where as a dual enrollment student, she was selected to serve as the "Face of MSJC"; and*

*WHEREAS, reaffirming her commitment to service, Logan Purvis has selflessly volunteered in various efforts in the community of Banning and, since 2007, has accumulated more than 1,000 hours to this endeavor, and she is a five-time recipient of the President's Volunteer Service Award, including a letter from President Barack Obama in appreciation of her role in strengthening the nation and making a difference through her volunteer service; and*

*WHEREAS, the strength of our communities, and the overall vitality of American society depend, in great measure, on the dedication of young people such as Logan Purvis, who is so admirably represent their generation through their talents and abilities, and who possess the initiative, drive, and determination to succeed in their efforts and use their considerable talents and resources to serve others.*

*NOW THEREFORE, I, Don Robinson, Mayor of the City of Banning along with the City Council do hereby recognize "LOGAN PURVIS" for her outstanding record of volunteer service, peer leadership, and community spirit and expend best wishes for continued success in her future endeavors.*

*IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of Banning, California to be affixed this 13<sup>th</sup> day of November, 2012.*

**ATTEST:**

Marie A. Calderon, City Clerk

Don Robinson, Mayor

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

08/28/12  
SPECIAL MEETING

A special meeting workshop of the Banning City Council was called to order by Mayor Robinson on August 28, 2012 at 3:00 p.m. at the Banning Civic Center Large Conference Room, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: Councilmember Botts

OTHERS PRESENT: Andrew J. Takata, City Manager  
Duane Burk, Public Works Director  
Jessica Hicks, Acting City Clerk

WORKSHOP ITEM

1. Presentation for the Authorization of the Riverside County Transportation Department to Act as Lead Agency to Exercise the Powers of Eminent Domain for the Sunset Avenue Grade Separation Improvements.  
(Staff Report – Duane Burk, Public Works Director)

Director Burk said that this workshop relates to an update and progress report for the Sunset Grade Separation and the outer highway I-10 Bypass. In attendance today is Patty Romo, Assistance Director to Riverside County Transportation Department and Dennis Landaal the Primary Principal Engineer for Kimley-Horn and Associates, Inc.

Sunset Grade Separation

Ms. Romo addressed the Council stating that she has had the pleasure of working on the Sunset Grade Separation Project for the City for the last few years and the good news is that we are just about there. One hundred percent of the funds are ready or we just need a little bit of right-of-way and we should be at construction early next year. At this time she started the power-point presentation (see Exhibit "A") starting with a rendering of what the Sunset Grade Separation is going to look like when completed, what is existing now at the grade crossing, and the proposed underpass. The project purpose is to eliminate the train vehicle conflict so that people can travel through there without being delayed by the trains, improve safety, reduce congestion, and improve emergency response time. She displayed some visual simulations of the project as you look from the freeway, from the railroad tracks, and views of retaining walls, on-ramps, sidewalk murals, and views south where Citibank and the Chevron gas station are located. Ms. Romo said that in regards to the right-of-way left to acquire they have been doing

well in obtaining the rights that they need to go forward with the project and displayed that on the screen.

Dennis Landaal with Kimley-Horn and Associates stated that they are the designers helping the County and City out for getting the grade separation completed. He went over briefly how they see the project being staged and he showed that on the power-point presentation and said that the total time for construction will be about 16 to 18 months in duration.

Ms. Romo continued the presentation stating that with any large project they want to make sure that they get out there and talk to the businesses and the public to let them know what is coming and get input from them so right before construction starts they will start sending out pamphlets, flyers, getting things in the newspaper, and create a web page for this project to keep everyone informed as to what is going on. She said that in regards to cost the most recent estimate is for a total of \$41 million dollars with \$33 million of that just for construction and construction management. She displayed a screen showing where the various funding is coming from for this project and a project status and schedule.

There were various questions from the Council in regards to this project.

Mayor Robinson opened the item for public comments on this portion of the presentation. There were none.

#### I-10 Bypass

Ms. Romo continued the power-point presentation on the I-10 Bypass project and said that they have been working on this for probably the last six months and have had Kimley-Horn begin the environmental document process. The purpose of this project is to create another alternative in case the I-10 is shut down because there is a need to get traffic through there and this is one piece that is going to bridge that connection to Cabazon and it will provide other benefits as well in helping local circulation and be a compliment to the General Plan supporting plan development and also helping with emergency response. She showed a graphic of the various alternatives that they have been studying that will be included in their environmental document and she went over the different alternatives. She continued with the project features and project status in regards to the completed, current, and future activities. She displayed some of the challenges that go along with the project. The estimated cost for the project is \$30 to \$40 million dollars and they are early in the stages and it has not been refined quite yet. She went over the Schedule of the Project and hopes to be out to construction by early to mid 2016.

There were various Council questions in regards to the bypass road.

Mayor Robinson opened the item for public comments on this portion of the presentation.

Don Smith said that he never completely understood why this project was moved south of the freeway but this road goes from Apache to Hathaway and once it gets to Hathaway it dead ends and they are going to have to go possibly up to Lincoln and then over to Hargrave and then over to the freeway to get back on the freeway again. And so at both Hargrave and Apache

neither of those roads have grade separations so if you think that is going to relieve the traffic on those traffic issues to have all these cars get off the freeway, you are still going to have a traffic jam unless you do something to get grade separations at both ends.

Director Burk said that was a very good comment that Mr. Smith points out however, this alternative is kind of a network as it relates to the overall circulation of the I-10 freeway or what happens on the I-10 freeway. The idea is that Hargrave is identified as a grade separation however you can see the struggles we have had with the Sunset Grade Separation and the funding. He would like to point out that this is three miles of road and the estimate is \$30 to \$40 million and the estimate for the Sunset Grade Separation is \$41 million. So these are definitely difficult to put together however he appreciates Mr. Smith comments but it is a start and it actually a huge cooperative agreement between the County, the City, and the Morongo Band of Mission Indians. This is not a go it alone project. Actually it is an overall regional approach and one that he thinks ultimately in the end will embrace the south side although it will be faced with future challenges also. The identification in the black that was not discussed is something that they are looking at in the General Plan as it relates to being a collector road. Currently our General Plan does talk about what Mr. Smith spoke to about going up Hathaway and they did widen Lincoln Street recently with some funding so all these things will be looked at on traffic studies and be brought to the Council in the future.

Director Burk said as the Council commented on he truly appreciates Patty and Juan's team and Dennis and Kimley-Horn's team as far as getting these projects moving along.

#### ADJOURNMENT

By common consent the meeting adjourned at 4:15 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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Exhibit “A” to the Minutes of the  
August 28, 2012  
Special Meeting Workshop

copy sent 8/27/12

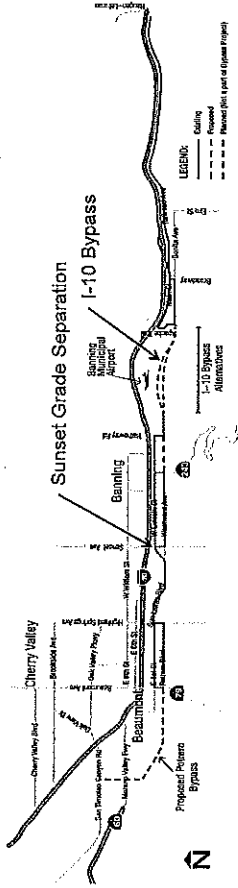
Presentation for  
**Sunset Grade Separation  
and I-10 Bypass**

August 28, 2012  
Presented to the City of Banning




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**Project Locations**



**Key Project Team Members**

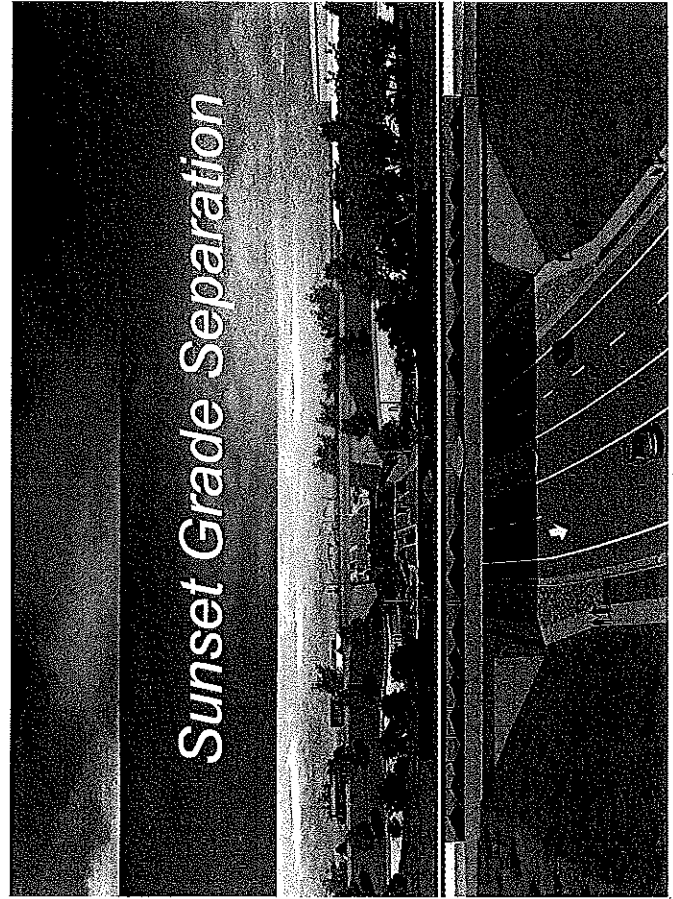
  
City of Banning  
Duane Burk      Kahono Oei

  
Riverside County Transportation Department  
Patricia Romo      Scott Staley      John Marcinek

  
Kimley-Horn and Associates, Inc.  
Dennis Landaal      Jason Valencia      Darren Adrian

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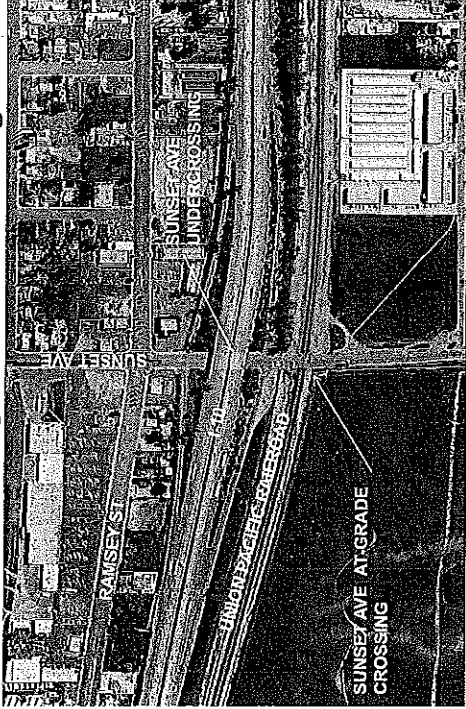
**Sunset Grade Separation**



4



Existing At-Grade Crossing



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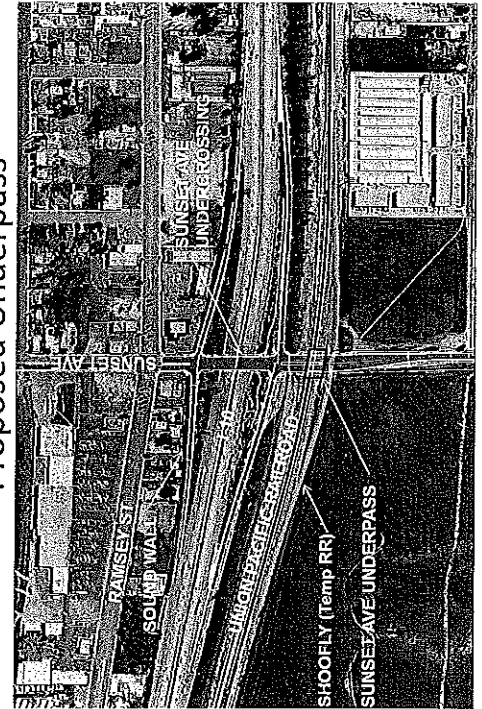
Project Purpose

- Eliminate Train/Automobile Crossing Conflicts
- Improve Vehicle and Pedestrian Safety
- Reduce Congestion and Traffic Delays
- Improve Emergency Service Response
- Facilitate Regional Commuter Rail Transportation

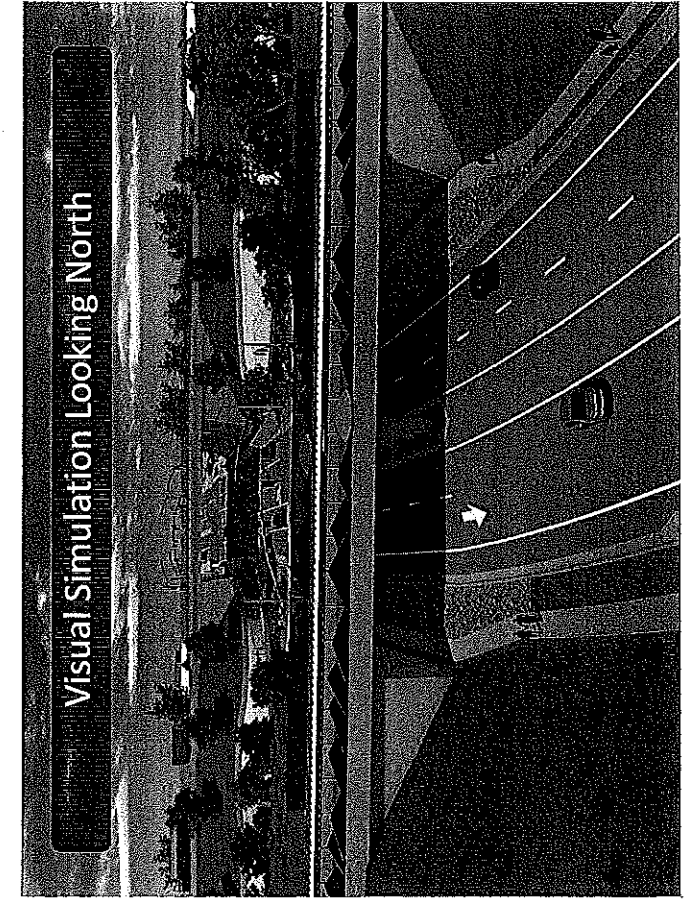
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Proposed Underpass

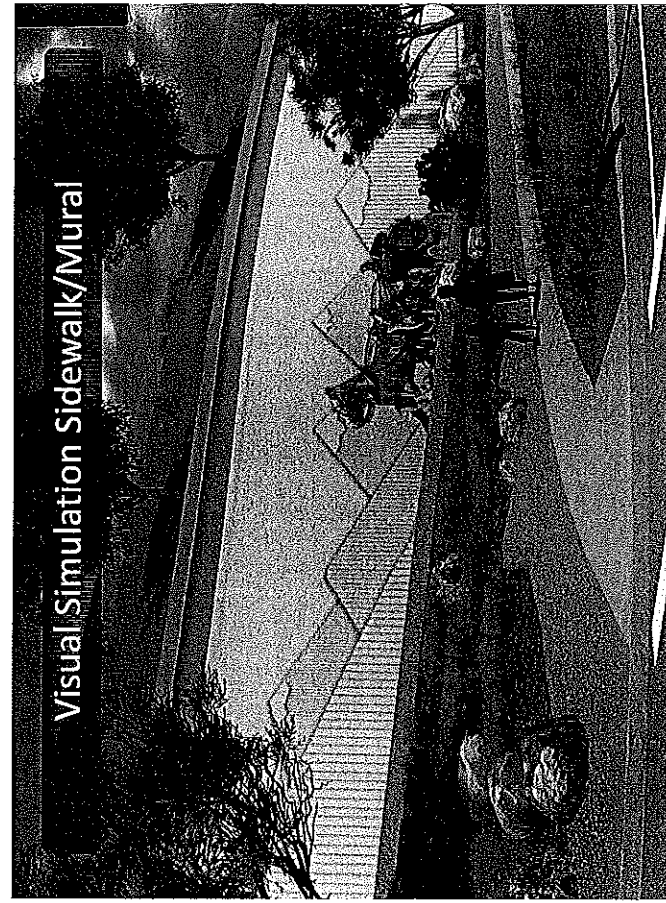
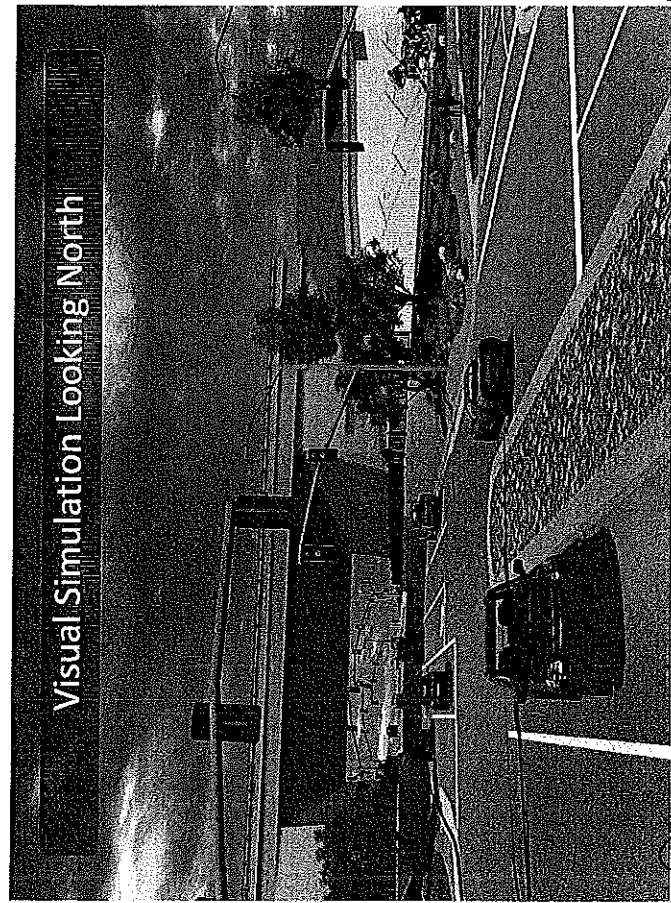
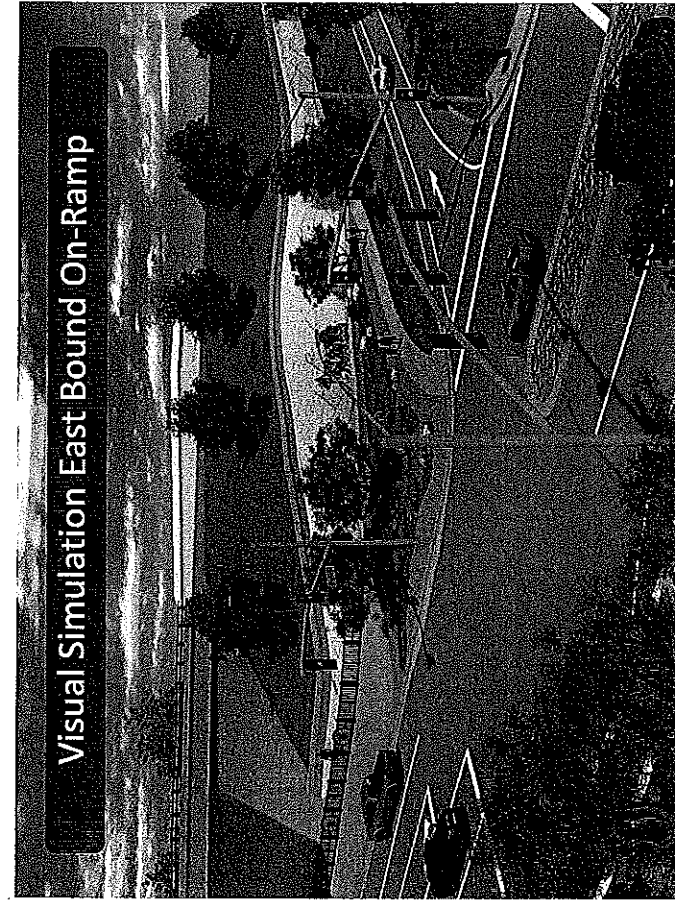
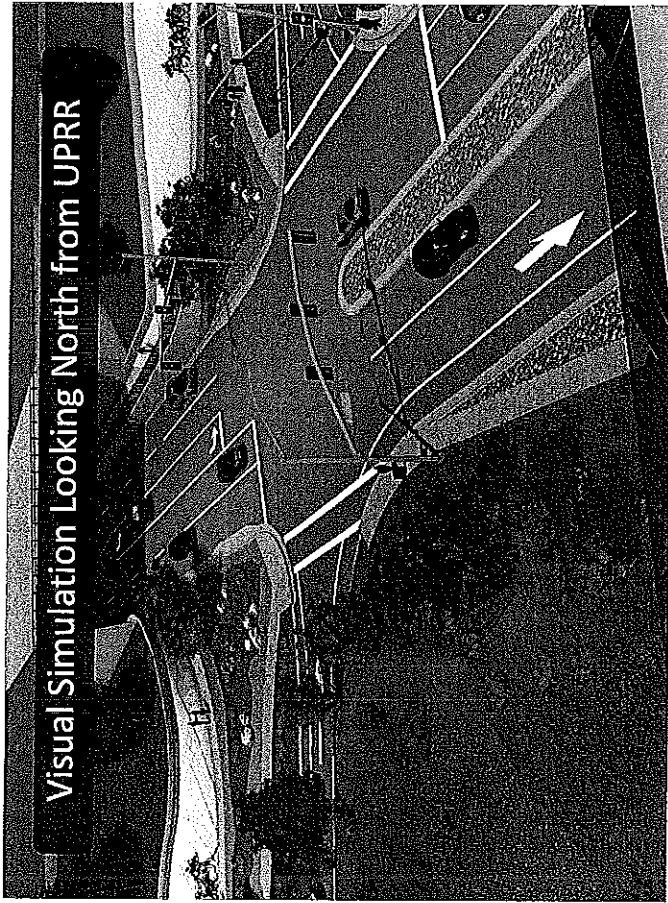


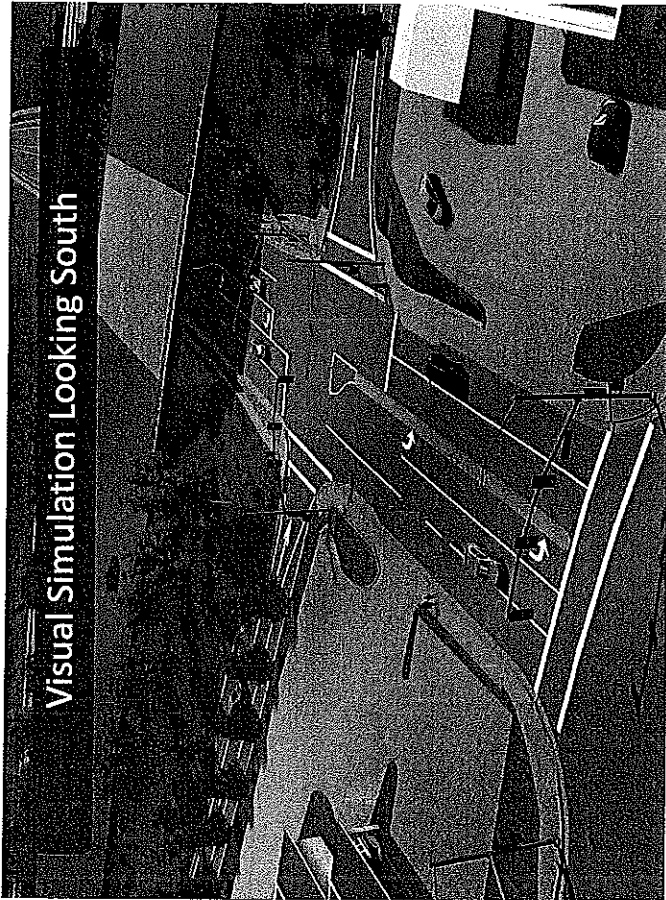
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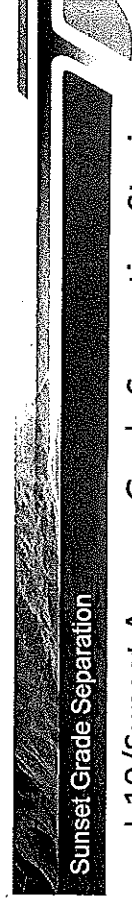
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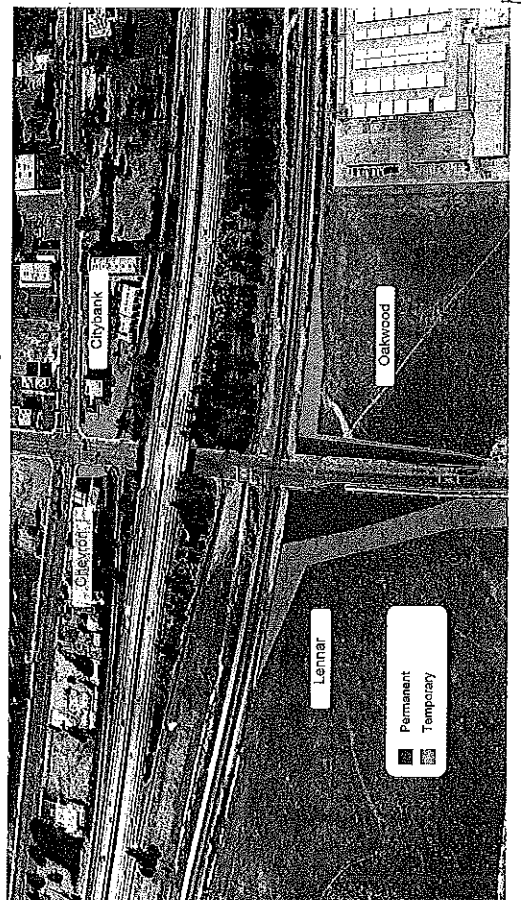
## I-10/Sunset Avenue Grade Separation Staging



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## Right-Of-Way



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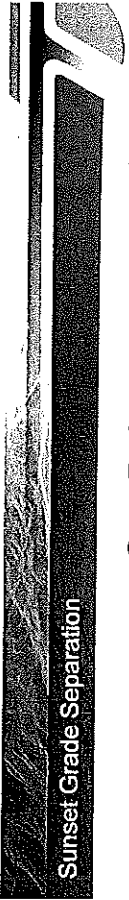


## Construction Public/Business Coordination

- **Public Awareness Campaign**
  - Pamphlets
  - Flyers
  - Newsletters
  - News ads
  - County web site
- **Motorist Information Strategy**
  - Highway Information Network-Caltrans website and Telephone hotline
  - Portable Changeable Message Signs

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## Cost Estimate

Task	Amount
Engineering Design & Environmental Clearance	\$3,200,000
Right-of-way Acquisition	\$800,000
Utility Relocations	\$4,000,000
Construction & Construction Management	\$33,000,000
	<b>\$41,000,000</b>

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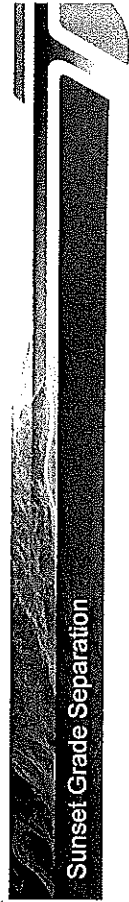


## Funding

Source	Amount
Federal Funding	\$9,100,000
Federal Earmarks (FY 2006 Appropriations)	\$990,000
Federal Earmarks (Surface Transportation Program)	\$493,000
State Trade Corridor Improvement Funds	\$10,000,000
Transportation Uniform Mitigation Fee	\$2,500,000
Utility Companies	\$2,760,000
City Funds	\$2,700,000
Unfunded (Pending RCTC Board approval)	\$12,457,000
	<b>\$41,000,000</b>

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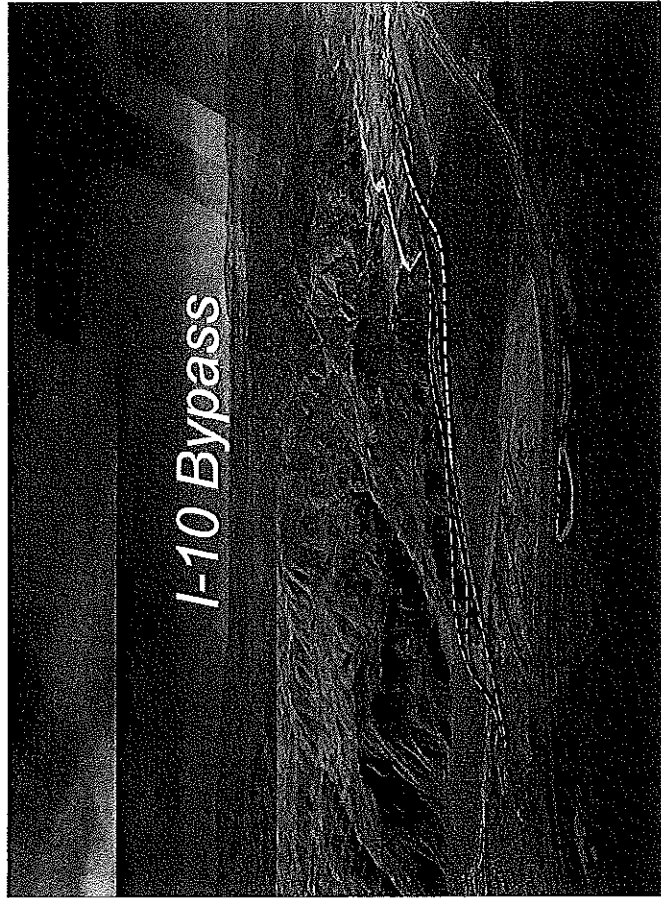
## Status and Schedule

### Project Status

- Caltrans currently reviewing 100% design documents
- Utility Relocation under design
- ROW Negotiations on-going
- Railroad Agreement on-going

Task	Start Date	End Date
Final PS&E Package (Roadway and Railroad)	10/12	
Railroad Agreements	11/12	
Right-of-Way Utility Certification	02/13	
Environmental Certification (RTL)	06/13	
CTCS Submittal	05/13	
Advise and Award Contract	09/13	
Begin Construction	09/15	

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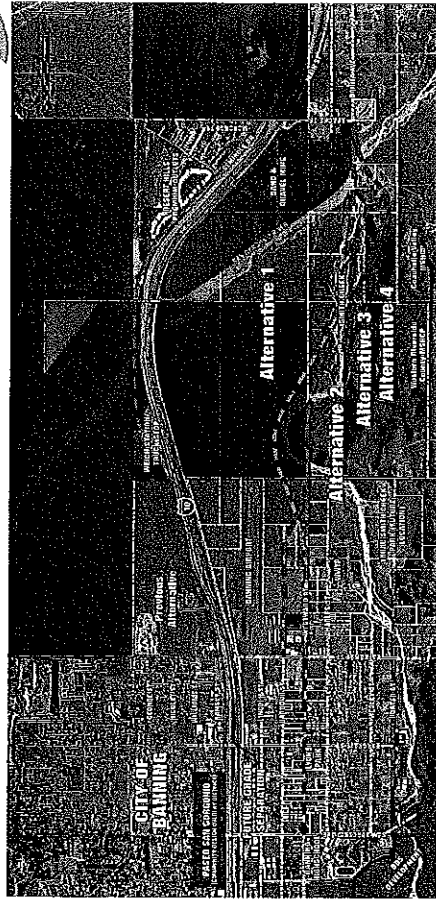
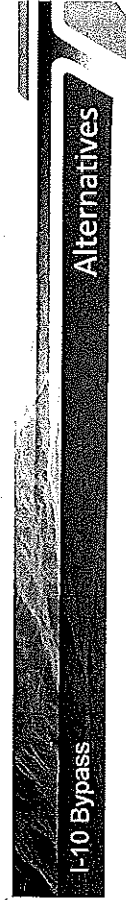
## Project Purposes

Provide an emergency bypass for I-10 between Banning and Cabazon

Improve the Arterial Highway Network between Banning and Cabazon

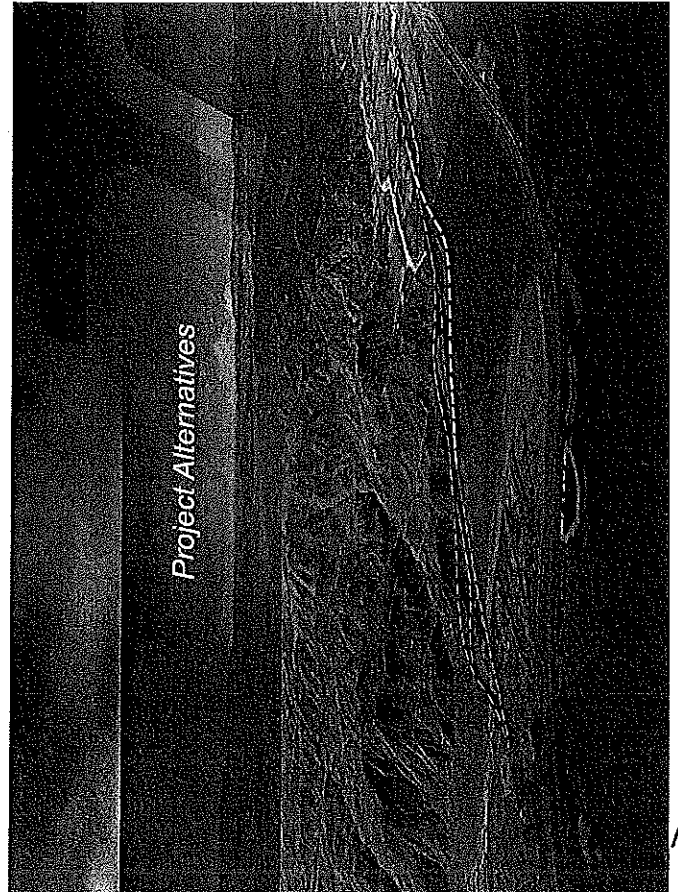
- Connect Banning and Cabazon
- Connect Bicycle and Pedestrian Facilities
- Support Planned Development
- Improve Public Safety/Emergency Response Access

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- LEGEND
- Proposed Line
  - City Limits
  - Indian Tribal Land
  - Alternative 1
  - Alternative 2
  - Alternative 3
  - Alternative 4
  - Previous Alternative
  - Washington St (Future)

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## Project Alternatives



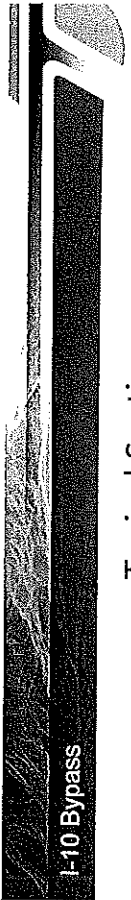
## Project Features

- Ultimate - 4 Lane Major Highway
- Potential interim phase of 2 to 3 lanes
- Approximately 3 miles in Length
- Bridges over Smith Creek and San Geronio River
- CHP Pull out area
- Pedestrian and Bicycle Facilities

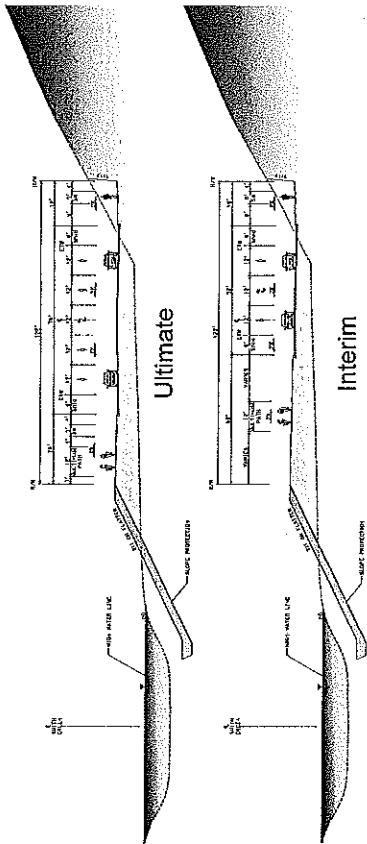
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## Typical Sections



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## Project Status

### Current Activities

- Alternative Analysis/Design
- Traffic Analysis
- Environmental Studies
- Preliminary Cost Estimates

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## Project Status

### Completed Activities

- Mapping
- Field Work
- Wetland Delineation
- Initial Stakeholder Coordination

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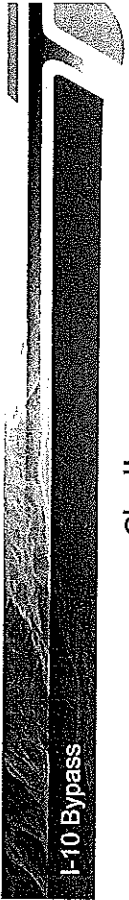


## Project Status

### Future (near term) Activities

- Hold Public Open House in October
- Alternative Screening
- Phasing
- Complete Environmental Studies
- Initiate Draft EIR/EA Document

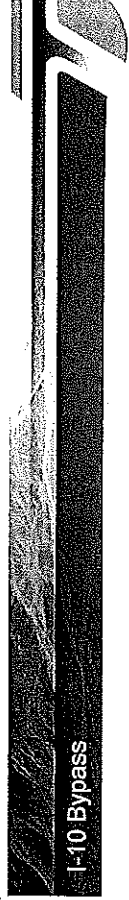
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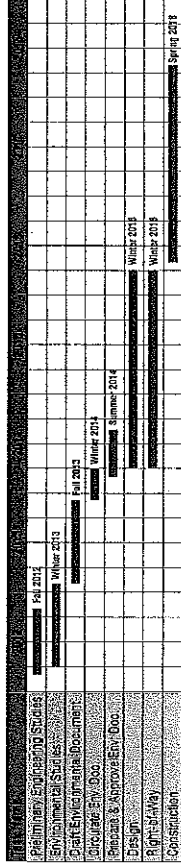
## Challenges

- Tribal lands and RRM mining rights
- Terrain
- Design speed
- Creek/River Crossings
- Environmental Sensitivities

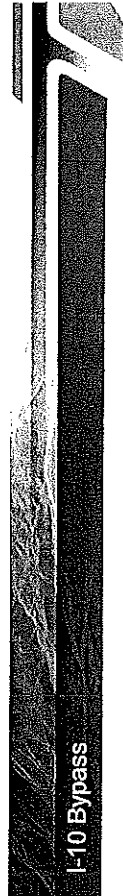
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## Schedule



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## Costs/Funding

Project Cost	\$30,000,000 to \$40,000,000
Existing Funding	Amount
Gaming Grant	\$2,200,000
Federal Earmark	\$1,700,000
TUMF	\$1,700,000
Total Existing Funding	\$5,600,000

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Thank You



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MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

08/28/2012  
SPECIAL MEETING

A special meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Robinson on August 28, 2012 at 4:15 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew J. Takata, City Manager  
June Overholt, Administrative Svcs. Dir./Deputy City Manager  
David J. Aleshire, City Attorney  
Zai Abu Bakar, Community Development Director  
Bill Manis, Economic Development Director  
Jessica Hicks, Acting City Clerk

CLOSED SESSION

City Attorney said listed on the closed session agenda is a real property negotiation/potential litigation matter involving the Oddfellows property at 42 W. Ramsey Street. That this time we would also like to add two other closed session items where the need to take action arose subsequent to the posting of the agenda and they are real property negotiations involving the property located at 128 and 130 San Gorgonio and the other is the Dill litigation matter.

**Motion Machisic/Franklin to add these items to the closed session agenda.** Mayor Robinson opened the item for public comments. There were none. **Motion carried, all in favor.**

City Attorney said also on the agenda was one item of potential litigation and labor negotiations.

Meeting went into closed session at 4:22 p.m. and returned to regular session at 5:05 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:05 p.m.

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Marie A. Calderon, City Clerk

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

08/28/12  
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the City Council and the Banning Financing Authority, Utility Authority and Housing Authority was called to order by Mayor Robinson on August 28, 2012 at 5:10 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  
David J. Aleshire, City Attorney  
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 George Rosemier, Banning United Methodist Church. Councilmember Hanna invited the audience to join her in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney reported that the Council met in closed session and added two items to the closed session agenda in regards to a litigation matter concerning Dill and real property negotiations concerning 128 and 130 N. San Geronio. There was a status report given on each of those matters and also in regards to the Oddfellows matter and no reportable action was taken. There was an item for potential litigation but that was not discussion. There was also a brief status report on labor negotiations and no reportable action was taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Henri De Roule, founder and CEO of The Banning Science and Technology Center, addressed the Council stating that they are continuing to progress quite rapidly toward the development of the center and are still on target to get it completed before the end of next year. If anyone wishes to



donate they are a 5013c public charity and donations can be sent to the Banning Science and Technology Center, Inc., P. O. Box 381, Banning, CA 92220.

Terri Griffin, Lombardy Lane addressed the Council regarding her concerns with the noise ordinance and the need to request assistance from the City Council. She and her neighbors have exhausted all other remedies available to them to try to resolve this on-going problem with Robertson's/Matich Cement company. It is not her intent to ruin this company or run them out of town or to cause people to lose their jobs; quite the contrary. Her intent is to try to obtain the Council's help in having Robertson's be considerate of their neighbors simply by complying with the municipal code that the City has in place for this purpose. The City has a very comprehensive detailed noise ordinance on the books today for the purpose to insure criteria and standards exist for the regulation of noise within the city limits. The code was designed to prevent unnecessary excessive unnatural and loud noises for the safety of the health and welfare of the peace and quite of the citizens of Banning. The standards describe what constitutes loud noises, what is intrusive, and what measurements should be taken to judge this. At this time Ms. Griffin went over a list those violations and her attempts to contact Robertson's and get this resolved. She said that Zai contacted her yesterday and is trying to work with them but she is asking the City Council to give staff the support and backing they need to enforce this.

Diane Smith, Lombardy Lane addressed the Council stating that they are essentially living in a "war zone" with the Robertson's/Matich Corporation, as well as, the shooting range where their 50 caliber bullets go off all day and all night. She went over the issues that are making their lives unbearable to live and said that she also has paperwork proving that this was supposed to be abandoned. They are under the impression that the City approved a special permit for this company on a time by time basis and she suspects that this company has been allowed to operate without City code supervision for a long time and this is supported by her comments and the police department that this is a City thing and Robertson's has been doing this for 100 years so there is nothing they can do about it. They have called Robertson's many times but have never received a call back until yesterday after Zai has pursuing this for them and the property manager, Kristen, told Zai that she had not heard of the problems until then and she assured her and others that she will follow-up to see what is going on. Ms. Smith said that Art has proof that he has spoken to Kristen so there is a discrepancy right there. Zai has been proactive in contacting people at Robertson's and Art has informed them about the geological study that is in the works and they are waiting on that.

City Manager said that staff is working on this issue currently and will continue to work on it. They may have to be some action that both the Planning Commission and the Council will have to take in the future in regards to this because the agreement of how they operated was done quite a long time ago prior to any of the Councilmembers that are sitting here today. They may be the need for some change in regard to their operating covenants.

Mayor Pro Tem Franklin stated that AQMD (Air Quality Management District) is also working on this and they are planning on a meeting in this area with the residents because they have heard of some of the complaints.

Fred Sakurai, 4985 Bermuda Dunes stated that he wanted to remind anybody that is considering having any sort of financial dealings with the Highland Springs Resort that the Korean owners are still trying to sue the City of Banning to stop the Pardee Development/Butterfield Homes project. Please reconsider any kind of financial dealings you might have with the Highland Springs Resort.

CORRESPONDENCE: None

PRESENTATIONS:

1. Proclamation: Recognizing the efforts of Mr. Jim Price, Mr. Richard Macias and Mr. Richard Soriano of Banning Pass Little League

Mayor Robinson read the proclamation for the benefit of the audience and he along with the Council Members made the presentation.

Mr. Price thanked the Mayor and the City Council and hundreds of people of Banning who have opened their hearts and their wallets and their time and energy in making this a hugely successful program and next year only promises to be better.

2. Stagecoach Update – Bill Lamb

Bill Lamb, Chairman of Stagecoach Days thanked the Council for helping out with in-kind services for the event. He said Mary Bono Mack will be their Grand Marshall and wanted to thank Mayor Robinson for his help and it is very much appreciated. He thanked the Andy Takata and Duane Burk for their help out at Dysart Park in the things that were needed in helping the event take place. He thanked Heidi Meraz from Parks and Recreation for being the liaison between the committee and the City which is very much appreciated. He thanked the various departments in the City that have also helped in getting the park ready and it is a tremendous help and without it they would really struggle to put the event on. New, this year, is the donation of a billboard from Lamar Outdoor Advertising and the General Manager Bill Hawk will speak to this item. Mr. Lamb said that for this year they have brought back the rodeo after a three-year absence and went over the events and new events that will be happening and new things planned for the parade. He thanked the community for all of their support and looks forward to a great event.

Bill Hawk of Lamar Outdoor Advertising addressed the Council thanking the City Manager, Bill Manis and Zai Abu Bakar for spending a few minutes with them and allowing Lamar to do some brainstorming. He said that Bill Manis had approached him about doing some promotion this year and then he approached the City Manager and staff with a concept to use a billboard that the City actually has possession of as it relates to their predecessor company making an agreement with the City of Banning so in that process he thought it might be a good idea to begin to use the space that is provided by Lamar advertising for the City's benefit for various and sundry events with this one being one of them and there will be others coming along. He said the billboard is in place and they have some other designs that will be presented to staff for additional promotion of the city and its various attributes.

## CONSENT ITEMS

City Manager said that they missed one thing during the study session and that was the authorization for the resolution for the County to act as our agent in the powers of eminent domain for the Sunset Avenue Grade Separation Improvement project so that would need be added as an emergency item and that is Resolution No. 2012-68.

**Motion Machisic/Franklin to add the additional item to the Consent Agenda. Motion carried, all in favor.**

1. Recommendation to Adopt a Resolution of Approving a Statement of Investment Policy.

Recommendation: That the City Council adopt Resolution No. 2012-63, Adopting a Statement of Investment Policy.

2. Approval of Accounts Payable and Payroll Warrants for Month of June 2012.

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

3. Approval of Accounts Payable and Payroll Warrants for Month of July 2012.

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

4. Report of Investments for June 2012

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

5. Notice of Completion for Project No. 2012-02, Street Improvements and Electrical Improvements on Ramsey Street between San Geronio Avenue and Martin Street.

Recommendation: That the City Council accept Project No. 2012-02, Street Improvements and Electrical Improvements on Ramsey Street between San Geronio Avenue and Martin Street as complete and direct the City Clerk to record the Notice of Completion.

6. Resolution No. 2012-64 Authorizing the Destruction of City Records As Provided By Section 34090 of the California Government Code and Resolution No. 2003-26 of the City of Banning.

Recommendation: That the City Council adopt Resolution No 2012-64.

7. Resolution No. 2012-68, Authorizing the Riverside County Transportation Department to Act as Lead Agency to Exercise the Powers of Eminent Domain for the Sunset Avenue Grade Separation Improvements.

Recommendation: That the City Council adopt Resolution No. 2012-68.

**Motion Machisic/Franklin to approve Consent Item 1 through 7. Mayor Robinson asked if there were any public comments on this item. There were none. Motion carried, all in favor.**

## JOINT MEETINGS

Mayor Robinson recessed the regular City Council Meeting and called to order a joint meeting of the Banning City Council and the Banning Financing Authority.

## CONSENT ITEM

Councilmember Botts pulled Consent Item No. 1 for discussion.

2. Authorize City Personnel and City Attorney Complete and Sign Documents Necessary to Participate in the State of California CAL-Card Program.

**Motion Hanna/Franklin to approve Consent Item No. 2, Authorizing City Personnel and City Attorney Complete and Sign Documents Necessary to Participate in the State of California CAL-Card Program.**

Mayor Robinson opened the item for public comments. There were none. **Motion carried, all in favor.**

1. Receive and File The Identity Theft Prevention Program.

Councilmember Botts asked what liability does this create for us and what is our responsibility. It appears for us to determine that somebody is fraudulently stealing somebody's identity that is paying their bill with the City and is that correct.

Director Overholt said that there is a combination with what he is asking. The federal government had an act that requires us to have a policy so that we are on alert so we have a liability to have the policy and we don't have a policy right now. With what we are doing tonight we have a policy in place and now we can go forward and train staff in conformance with the policy. We had some vulnerability by not having the policy in place and now with the policy we are complying with what the federal government wants us to do. We are not responsible to be investigators into fraud but we are responsible to protect documents and if we notice something unusual, we have a protocol of how we are going to handle it.

There was some further Council and staff discussion on this item in regards to liability.

**Motion Hanna/Franklin that the City Council receive and file the Identity Theft Prevention Program.** 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 Financing Authority and called to order a joint meeting of the Banning City Council and the Banning Utility Authority.

## CONSENT ITEM

1. Resolution No. 2012-11UA, "Authorizing the City Manager to Execute the Regional Water Agreement.

**Motion Botts/Hanna to approve Consent Item No. 1, that the Banning Utility Authority adopt Resolution No. 2012-11 UA, Authorizing the City Manager to Execute the Regional Water Allocation Agreement.**

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 called to order a joint meeting of the Banning City Council and the Banning Housing Authority.

#### CONSENT ITEM

1. Successor Agency Organizational Matters, the Adoption of the Recognized Obligation Payment Schedule for January through June, 2013 and a Request for Appropriation of Funds in the Amount of \$150,000.00 from the 2003 Low/Mod Tax Allocation Bonds to Implement the Housing Exterior Rehabilitation Program for Qualified Low and Moderate Income Residents.

**Motion Franklin/Botts that the Successor Agency to the dissolved Community Redevelopment Agency: 1) adopt Resolution No. 2012-12 SA, Setting Forth Organizational Matters Pertaining to the Successor Agency; 2) adopt Resolution No. 2012-13 SA, Approving and Adopting the Recognized Obligation Payment Schedule for the period of January 1, 2013 through June 30, 2013; 3) adopt Resolution No. 2014-04 HA, Appropriating \$150,000.00 from the 2003 Low/Mod Tax Allocation bonds (F857) to fund the Low-Moderate Income Housing Exterior Rehabilitation Program; and 4) Authorizing the Administrative Services Director/Deputy City Manager to appropriate \$150,000 from the 2003 Tax Allocation Bond Fund and to make the necessary budget adjustments, appropriations and transfers to fund this program.**

Mayor Robinson opened the item for public comments.

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

Phyllis Zakian, 1498 N. Eighth Street, spoke in favor of this item.

**Motion carried, all in favor.**

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

## PUBLIC HEARING/REPORTS OF OFFICERS

1. Resolution No. 2012-02 FA, authorizing staff to evaluate the EB-5 proposed documents and the proposed taxable revenue bonds  
(Staff Report – Bill Manis, Economic Development Director)

Director Manis gave the staff report on this item as contained in the agenda packet.

Mayor Pro Tem Franklin said to clarify for the public this does not cost the City any money and also the City is not on the hook for the bonds.

Director Manis said the various costs associated with the bonds would be taken out of the bonds and the actual developer of the project, JMA Village, which is a partnership that they formed, would be responsible ultimately for the bonds. The City does not have any liability associated with those bonds. City Manager said nor does it affect your credit.

There were some further Council and staff discussion.

Mayor Robinson opened the public hearing for public comments. Seeing no one coming forward, Mayor Robinson closed the public hearing.

**Motion Hanna/Machisic that the City Council and Banning Financing Authority Adopt Resolution No. 2012-02 FA of the Banning Financing Authority authorizing the Executive Director, Financing Authority Treasurer and designees to work with a financial advisor and bond counsel, Don Hunt of Fulbright & Jaworski, LLP, to perform due diligence in reviewing the proposed EB-5 proposals submitted by representatives of Inland Investor Visa Group 8, Inc. and in reviewing the proposed documents related to issuing the taxable revenue bonds. Motion carried, all in favor.**

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

### City Council

Councilmember Hanna –

- As part of Stagecoach Days there is a Spaghetti Dinner to be held on Wednesday, Sept. 5<sup>th</sup> from 4 to 6:30 p.m. at the Banning Community Center, 789 N. San Gorgonio Avenue. Tickets cost \$7.00 each. This will benefit the Banning Rotary Club scholarships and Habitat for Humanity.
- The Boys and Girls Club of the Pass will hold their annual fundraiser “Duck Derby” at the Casino Morongo in the pool area to be held on Monday, Sept. 10<sup>th</sup> from 6 to 9:30 p.m. The cost is \$50.00 but you can buy a duck for \$5.00.

Councilmember Machisic –

- WRCOG (Western Riverside Council of Governments) HERO Program has already allocated \$36 million dollars for projects. Also, they will be sending to the City a new joint powers agreement to sign so that they can go state wide with the HERO Program.
- In regards to RCA (Regional Conservation Authority) under a government program called "Section 6", RCA has received \$4 million dollars to buy land to protect wildlife and that is quite an accomplishment.

Councilmember Botts –

- In regards to the Boys and Girls Club of the Pass he wanted to remind everyone that we serve almost 900 children in a day throughout Beaumont and Banning and in fact, we now have a contract with Yucaipa and Calimesa and if we didn't have these programs there would be 800 latch-key kids. This is an outstanding afterschool program, as well as, our clubhouse at Roosevelt Williams Park. He would encourage everyone to attend the fundraiser.

Mayor Pro Tem Franklin –

- Thank you to Mr. Hawk and she informed the public that he has been graciously contributing the Disaster Preparedness Expo billboard for seven years so we hope we will be able to continue that relationship.
- To the Banning Police Department a very sincere thank you for their response to an accident that happened Saturday night and they were excellent in the way they handled the affair.

Report by City Manager

- E2G2 (Easy 2 Get 2) is a business license program which the Council approved about six months ago and we now have a video on our City's website which talks about some of the benefits of this program and this is something that will help our businesses. We are one of the first ones in the country to do this program.
- For those that want to do development or want to open a business in the city we do have a free pre-application program through our Economic Development Department.
- Zenner Performance, the 6<sup>th</sup> largest water meter company in the world, officially established their US headquarters here in Banning, California on August 23<sup>rd</sup> located at 1910 E. Westward Ave.
- We have been working with a company called Pass Job Connections and they help people create a winning resume, apply for jobs on line and those types of things and they will officially open their doors on Tuesday, Sept. 11<sup>th</sup> from 2 to 4 p.m. and they are located at 789 N. San Gorgonio Avenue (Banning Community Center).
- Arron's our newest retail store which specializes in furniture and electronics and also rent items will have a ribbon cutting ceremony on Thursday, Sept. 6<sup>th</sup> located at the old Banning Police Station on Ramsey.
- In regards to the Coyne Motorsports he will be closing his Indio store and be moving all his goods on September 4<sup>th</sup> into the Banning store (the old Dodge Dealership).

Mayor Robinson –

- On September 11<sup>th</sup> the Fire Memories Museum from 8 to 11 a.m. will have their fire trucks out here on the San Gorgonio overpass flying flags for our country and then starting around noon they will have a memorial in honor of September 11<sup>th</sup> at the fire museum.

City Committee Reports - None

Report by City Attorney - None

ITEMS FOR FUTURE AGENDAS – There were none.

ADJOURNMENT

By common consent the meeting adjourned at 6:10 p.m.

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Marie A. Calderon, City Clerk

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



MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

09/11/2012  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Robinson on September 11, 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 Hanna  
Councilmember Machisic (arriv. 4:25 p.m.)  
Mayor Robinson

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew J. Takata, City Manager  
June Overholt, Administrative Svcs. Dir./Deputy City Manager  
David J. Aleshire, City Attorney  
Glen Tucker, City Attorney  
Zai Abu Bakar, Community Development Director  
Bill Manis, Economic Development Director  
Jessica Hicks, Acting City Clerk

CLOSED SESSION

City Attorney said that there was a need to add two items to the closed session agenda in regards to real property negotiations concerning 182 Ramsey Street and an update on the litigation matter concerning Dill.

**Motion Hanna/Franklin to add these two items to the agenda. Motion carried, all in favor with Councilmember Machisic absent.**

City Attorney announced that the City Council will discuss the following items: one case of potential litigation pursuant to the provisions of Government Code Section 54956.9; pursuant to the provisions of Government Code Section 54956.8 to confer with its real property negotiator regarding APN: 541-141-002; APN: 541-141-003 and 128 N. San Gorgonio Ave.; conference with labor negotiators pursuant to Government Code Section 54957.6; pursuant to the provisions of Government Code Section 54956.9(a) to confer with legal counsel with regards to one matter of pending litigation – City of Banning v. Mary Ann Dureau and an update regarding the Dill matter.

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

City Council convened in closed session at 4:05 p.m. Councilmember Machisic joined closed session at 4:25 p.m. City Council returned to regular session at 5:06 p.m.

ADJOURNMENT

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

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Marie A. Calderon, City Clerk

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

09/11/12  
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the City Council and the Banning Financing Authority was called to order by Mayor Robinson on September 11, 2012 at 5:12 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: June Overholt, Administrative Services Dir./Deputy City Manager  
Duane Burk, Public Works Director  
Zai Abu Bakar, Community Development Director  
Leonard Purvis, Police Chief  
Heidi Meraz, Community Services Director  
Bill Manis, Economic Development Director  
Jessica Hicks, Acting City Clerk

The invocation was given by Pastor George Rosemier. Mayor Robinson invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney stated that the one item listed concerning potential litigation was not discussed. He said Council met in closed session to discuss real property located at 128 San Gorgonio and a status report was given in regards to labor negotiations, and in regards to Banning v. Mary Ann Dureau. There was no reportable action was taken on each of those items. The Council voted to add two items to the closed session agenda concerning real property negotiations at 182 Ramsey Street and a litigation matter regarding Dill. A status report was given on each of those matters and no reportable action was taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

Marion Johnson announced that the San Gorgonio Child Care Center annual open house will be held on September 21<sup>st</sup> from 6 to 7 p.m. The Center has been operating for more than 30

years. She invited the Council and the citizens of the community to come to the Center and see what they are offering the pre-school children and before and after school children. The San Gorgonio Child Care Center is located at 671 N. Florida and for more information you can call the Center at 951-849-2930.

Claudine Roper, Banning Center for the Arts, 130 N. San Gorgonio addressed the Council stating that she is here in regards to the Banning Centennial and as a part of this they formed a committee that would enlist artists to paint banners that businesses or any individual would be invited to purchase. She showed some of these banners that are for sale and some that have been purchased and there are ten at the gallery right now available for purchase. On September 20<sup>th</sup> from 5 to 7 p.m. at the Banning Women's Club they will be having a reception showing the banners that are for sale and light refreshments will be served. There are a total of 50 banners in the process of being painted and there are 35 individual artists and 15 from Mt. San Jacinto College.

Don Smith added that the banners are going to hang in downtown Banning from the beginning of January through the end of Nov. 2013 to celebrate the centennial. When they come down whoever purchased or sponsored that banner will then be able to take it home or to their business. Anyone that is interested in the banners can either go to the art gallery or contact Barbara Hanna at [barbarafhanna@yahoo.com](mailto:barbarafhanna@yahoo.com). In regards to the "Banning Science Experience" they have just received an in-kind grant that they are excited about. In the month of December they are going to have a NASA sponsored portable planetarium. It will be in various locations in our district and when it is in Banning it will be at the Gilman Ranch and an exact date has not been given yet but in addition to the planetarium they have an astronomer coming and a star show will be given as well. More information will follow in the month of December.

Charlene Sakurai, 4985 Bermuda Dunes expressed her thanks to the Stagecoach Days Committee. She didn't go to Dysart Part but she did go to the parade and she was very impressed and felt it was a very nice parade, wonderful variety within the parade and it involved a lot of people not just from Banning but the Pass area. She said that it seems when we have a grand marshal that is a big deal and there was not a lot of parade fanfare around it and it seems if you didn't see the sign on the side of the fire truck, you almost missed it until it went by. She suggested that for future parades that a banner be made that can be carried by two people so that it announces the person ahead of time.

CORRESPONDENCE: There were none.

#### CONSENT ITEMS

Mayor Pro Tem Franklin pulled Consent Item No. 4 from the Consent Items.

1. Accept Grant of Easement from Lennar Homes of California, Inc., APN 537-110-006 for Sunset Avenue Grade Separation Project.

Recommendation: That the City Council accept the Grant of Easement from Lennar Homes of California, Inc., Assessor's Parcel No. 537-110-006, for Sunset Avenue Grade Separation, and

direct the City Clerk to accept and record said easement. The parcel is described in attached Exhibit "A" and "B".

2. Resolution No. 2012-72, Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-012-2012 (D), 'Taxiway 'A' Relocation – Phase 1B Relocation of the Fueling Facility.

Recommendation: That the City Council: 1) adopt Resolution No. 2012-72, Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-012-2012 (D), Taxiway "A" Relocation – Phase 1B Relocation of the Fueling Facility; 2) Authorize the City Manager to execute the Grant Agreement Offer and subsequent Grant Agreement with the Federal Aviation Administration; and 2) Authorize the Administrative Services Director to make the necessary budget adjustments to record the grant revenue into the Airport Fund.

3. Resolution No. 2012-73, Approving an Amendment to the Professional Services Agreement with C&S Engineers, Inc. for Design Services at the Banning Municipal Airport.

Recommendation: That the City Council: 1) adopt Resolution No. 2012-73, Approving an Amendment to the Professional Services Agreement with C&S Engineers, Inc. for Design services at the Banning Municipal Airport; 2) Authorize the Administrative Services Director to make necessary adjustments and appropriations in an amount of \$88,824.00 from the Airport Fund to Account No. 600-5100-435.33-11 to fund the amendment to the Professional Services Agreement with C&S Engineers, Inc.; and 3) Authorize the City Manager to execute the amendment to the Professional Services Agreement with C&S Engineers Inc. of San Diego, CA.

5. City Council Resolution No. 2012-69, Approving the Phase II Renewable Development Agreement between SCPPA and the City of Banning.

Recommendation: That the City Council adopt Resolution No. 2012-69, approving the Phase II Renewable Development Agreement between the Southern California Public Power Authority (SCPPA) and the City of Banning attached as Exhibit "A".

6. Resolution No. 2012-70 Approving the Local and System Resource Adequacy Capacity Purchase Agreement with Shell Energy North America for Calendar Year 2013.

Recommendation: That the City Council adopt Resolution No. 2012-70.

7. Notice of Completion for Project 2012-02EL Photovoltaic Power System Engineering Services.

Recommendation: That the City Council accept Project 2012-02EL Photovoltaic Power System Engineering Services as complete and direct the City Clerk to record the Notice of Completion.

8. Resolution No. 2012-65, Approving the Banning Electric Utility Power Content Label

Recommendation: That the City Council adopt Resolution No. 2012-65.

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

**Motion Hanna/Machisic to approve Consent Items 1 through 3 and 5 through 8. Motion carried, all in favor.**

4. Resolution No. 2012-71, Accepting Community Development Block Grant Program Funds for Fiscal Year 2012-2013.

Mayor Pro Tem Franklin said she just needed to pull this for her abstention because she is involved with the San Geronio Child Care Center.

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

**Motion Machisic/Hanna that the City Council approve Consent Item No. 4 adopting Resolution No. 2012-71. Motion carried, all in favor with Mayor Pro Tem Franklin abstaining.**

#### PUBLIC HEARING

1. Amendment to Municipal Code Chapter 8.44 related to Noise Exemptions  
(Staff Report – Zai Abu Bakar, Community Development Director)

Director Zai gave the staff report as contained in the agenda packet.

Councilmember Hanna said that she understands that this is common and probably most cities have something like this but wanted an explanation as to why the City should treat themselves differently than what private development would have to do in terms of noise during construction and so forth.

Director Zai said that the question came up from the County Flood Control District. They are working on a capital improvement project in our community to improve the Gilman Flood Channel from 12<sup>th</sup> Street all the way to Williams and as part of the California Environmental Quality Act (CEQA) there is no performance measurement, if you will, because CEQA requires that so in order to answer the question in CEQA they said either you provide performance standards or exempt public agency projects. She stated that public agencies are already exempt from the rules already under State law.

Mayor Robinson opened the public hearing on this item. Seeing no one come forward, he closed the public hearing on this item.

**Motion Machisic/Franklin that Ordinance No. 1454, Amending the Municipal Code Chapter 8.44 to provide noise exemptions for projects or activities that are designed to protect the long-term health, safety, and welfare of the community, pass its first reading. Motion carried, all in favor.**

2. Amendment to Municipal Code Chapter 8.48 regarding Reasonable Time Frame for Notice of Violation of the Municipal Code and Zoning Code and Minor Code Clean-up Staff Report – Zai Abu Bakar, Community Development Director)

Director Zai gave the staff report as contained in the agenda packet.

Mayor Robinson opened the public hearing on this item. Seeing no one come forward, he closed the public hearing on this item.

**Motion Franklin/Hanna that Ordinance No. 1455 amending the Municipal Code Chapter 8.48 regarding reasonable time frame for providing a notice of violations of the Municipal and Zoning Codes to the owners of property in the City of Banning and also minor clean-up to Chapter 8.48 pass its first reading. Motion carried, all in favor.**

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

##### City Council

Council Member Hanna –

- She shared that today in honor of 9/11 Fire Memories brought a number of fire trucks to the overpass at San Geronio Avenue over the I-10 freeway and it was really thrilling. She said that she spent about 20 minutes there and it was like being in a parade. She expressed her appreciation to Fire Memories.
- She said that in regards to the Banning Centennial she wanted to give a brief update and would give another more extensive update probably in November when she can be on the agenda. She handed out to the Council a one-page flyer that was created for Stagecoach Days that list some of the events and the need for volunteers and how to obtain information and later this Fall there will be a website called “banning100birthday.com”. The Centennial is actually moving along very well and each of the groups that are developing events are doing really, really well and the kick-off will be the December 1, 2012 Phineas Banning Festival. Another issue related to this is that Mike Rose has developed this notice of bringing Phineas Banning back to Banning and he has an artist that will be creating a sculpture of Phineas Banning and the Alliance is kind of the lead on this and they are looking for contributions of \$250 to go towards this. One of the things that the City should consider, if we are interested, is where it should be placed. There are actually two that will be done in a very light format and used in special events, etc. Don Smith added some information in regards to the process of the sculpture and when they will be unveiled. Councilmember Hanna added that one of the major projects that they are attempting to undertake is with the new courthouse and this was

discussed with them before to have a mural or some major piece of art representative of our history in the new courthouse and the Alliance is taking the lead on this also because of their art expertise. In regards to Earth Day they have now focused on April 13<sup>th</sup> and it will be held at Gilman Ranch and it will be "Earth Day and Native Plant and Flower Show". They are inviting over 60 different individuals and groups to be a part of it but the committee got real excited when they came up with the idea of having a field day for Banning students the day before. It will be curriculum-based on the various issues of recycling, sustainability and other important issues and the County has agreed that they will not charge the students any thing and that will be focused mostly on 3<sup>rd</sup> and 4<sup>th</sup> graders. They will probably need volunteers for each of these events. A lot of these events will probably be held in the downtown area, Repplier Park and a few at the Gilman Ranch. Some of you will remember that we had our first charity bike ride last year called "Ride the Coach" and it was very successful but we want to improve it and the also the County that same weekend had "Wild West Days" and now the County had agreed that we will combine these two events and it will be on June 1<sup>st</sup> and 2<sup>nd</sup>. Councilmember Hanna said that they have set their goal of raising \$100,000.00 dollars with the expectation that perhaps half of it might be spent on the actual events and with the remainder they hope to create something called the "Banning Community Fund" which will be an endowment that will be distributed every year to benefit local non-profits. They now have \$50,000 dollars committed so far.

Mayor Pro Tem Franklin –

- She attended the League of California Cities Conference last week and got a lot of information in regards to what other cities are doing to improve their communities.
- She thanked the Stagecoach Days Committee for doing such a good job with Stagecoach Days. She had the opportunity to work the front gate on Friday and there was a lot of people coming through and they asked them as they left how did they enjoy it and they did not have one single negative comment. More people than every before were really happy with what was there this year and there were a lot of good comments about the parade also.
- Today she stopped by the Job Connection because it was their opening day for helping people fill out applications and understand about resumes and searching for jobs and they actually had over 12 people sign up today and they were very enthusiastic. They have workshops and actually have one-on-one assistance.

John Machisic –

- Yesterday at WRCOG (Western Riverside Council of Governments) Senator Jim Brulte did a composite of the propositions that are coming up and he gave a copy of this information to each of the Councilmembers because you are going to begin getting information through different sources and so this kind of gives you an overview about what each proposition is about so you are better informed.
- He passed out a sheet regarding the HERO program. This is a program where you can fix up your home for energy savings, electricity, water and so on and you will notice that down at the extreme right hand corner they have allocated already \$45 million plus dollars and the total number of applications is 2251 and they have approved 1480. This is an amazing program and it has grown in leaps and bounds and probably within less than a month we will probably get a contract to change the JPA (Joint Powers Agreement) with WRCOG to make it go State wide because they have had a lot of inquiries from other places in the state from about 48 counties.



- The League of California Cities representative spoke and she talked about all the bills that are on the governor's desk and one of them that really affected Riverside County. As you know or maybe don't know, there are four new cities that were created in the last year in western Riverside county and new cities by law are supposed to be getting extra revenue to get them started up which is logical and about two months ago the governor took that money away and if you read the editorial in the LA Times, they were happy that the State took that money away from these four cities. WRCOG wrote a letter of complaint about the editorial itself in the LA Times and they were very critical of the editor and rightly so. Now there is a bill 1098 and in it, it will restore the money to these four cities assuming the governor signs it but she indicated that the governor at the present time based on what they hear at the League of California Cities it is like a 60/40 proposition (60% chance he is going to reject it and 40% chance he is going to approve it). Also the Director of SCAG (Southern California Association of Governments) made a 45 minutes presentation covering the issue that they have to cover when they have to predict things for growth and there must have been 50 factors and it is such a complex problem but he did an outstanding job in presenting it to us.

Councilmember Botts –

- He said that he did not have a report but felt strongly that we need some clarification in regards to letters to the editor in regards to mortgage-backed securities but if you read that, you know that we have a perennial gentleman from Sun Lakes who barks and raves a lot. He said he can only speak for himself that once you are elected you know that you are going to be attacked and debated and good-honest debate he can take but when it is absolutely dishonest and full of lies, he feels like we need to surface that and Mr. Taylor regularly writes letters and also someone running for the City Council on the same subject. In regards to mortgage-backed securities the issue the gentleman raises is that we are nuts and not knowledgeable and running a terrible city, not only the Council, but the staff because we would buy mortgage-backed securities and having come from the banking business there is a lot he would agree with him on. He said that mortgage-backed securities were an integral problem across the country but it didn't have anything to do with the City of Banning and it came up he thinks because it was in part of a policy that we talked about and we didn't talk about mortgage-backed securities; we talked about helping finance the financial enhancement of the Paseo San Geronimo Project, the conduit bonds of which there is no responsibility to the City or by the taxpayers. He knows that they are going to try to send a press release out to try to have the public understand that we are not involved in mortgage-backed securities. He said maybe out Finance Director could shed a little light on it.

Director Overholt said in response to the question that came up the City has sent a letter to the editor to provide some clarity on what the City actually does. At the meeting of August 28<sup>th</sup> Council adopted an Investment Policy which is adopted every year and pretty much it remains status quo with minor tweaks and since she has been here and it is on her radar to thoroughly investigate everything that is in there. One of the things that is in the policy is the mortgage-backed securities. The City does not invest in mortgage-backed securities nor has it. So it is unclear to her historically why it ever got in the policy in the first place because the City has never invested in MBS nor is there any intention to do so. On the same night there was also an investment report and so anybody that would be interested in actually seeing how the City invests its money has the opportunity to do that because that report is part of the agenda packet and we can

pull it out separately from the website in ease of finding it and that clearly shows the City has invested its funds very conservatively and mostly money-market and LEIF is where most of the money is sitting. The City does invest in Fanny Mae and things of that nature but the policy clearly defines that we need to have it US Government guaranteed and that is what those are. Those are a couple of items that will help to provide comfort to anybody in the community as far as how the City manages and invests its money. The State of California also provides pretty strict guidelines as to what we can do and so we are in compliance with the State of California. We also work with a professional adviser who works with multiple cities and he is totally aware of what the State of California says and he is also aware of the city's policies and makes sure that we are also in compliance with the rules and regulations outside of the City. She stated that she works informally with the treasurer letting him know where we are at with our investments.

Councilmember Botts said he hopes that this helps for anyone that is interested in that mortgage-backed securities issue. He further explained how the City is trying to continue to do economic development with the loss of redevelopment.

Mayor Pro Tem Franklin –

- She asked Katie Duarte from Banning High School to come forward to speak on a fundraising project to help the Pediatric Trauma Project.

Katie Duarte said that the Key Club is collecting old shoes and they are sent to an organization to be fixed up and they send them to people who need shoes and then they would get a certain amount of money for each pound of shoes. Not only does it help the people who need the shoes but helps the Key Club to do more community service in the area. You can bring the shoes to Lithopass Printing on San Geronio and also if you want them to be picked up, you can call her at 951-230-6952.

Mayor Robinson –

- He stated that the Council also attended an event held by the Boys and Girls Club last night called the "Duck Derby". There were some Duck Dudes and Duck Divas and a lot of money was raised at the Morongo Casino who is also a big partner with this event. This affects approximately 790 kids throughout the Pass Area.

City Committee Reports - None

Report by City Attorney – None

Report by City Manager

- Ribbon cutting for Aaron's on Thursday, Sept. 13<sup>th</sup> at 10:30 a.m.
- He commented on the earmarks for the Sunset Grade Separation that needed to be used by October and stated that the County is going to use those earmarks and in exchange they will give us that same amount of money from a different fund.
- The County had a bill of \$1.2 million for sewer fees and they have paid it and that was through the Smith Correctional Facility basically.
- There were some complaints about the White House and the possibility of a convalescent home going in there and the City has responded with a letter. Right now there is no

convalescent home going in at that location but if they wanted to do that they would have to go through a process with the City.

- There is no regular Council meeting planned for September 25<sup>th</sup> but there will be a closed session.
- Mayor Robinson said that Pass Auto Center has a ribbon cutting tomorrow, Sept. 12<sup>th</sup> at 11:30 a.m.
- The State of the City will be held on October 16<sup>th</sup> in the Council Chambers and if you sign up for lunch, that will be held at the Dorothy Ramon Learning Center on San Gorgonio.

#### ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

##### 1) Policy on Proclamations

Mayor Robinson asked what this was about. City Manager said that this is an item to be scheduled. As you know the process is that if a Councilmember asks us to put something for a future agenda it is supposed to come back under future agenda items and this is a request from Mayor Pro Tem Franklin in regards to proclamations and she felt there should be a policy. Right now proclamations are at the discretion of the Mayor.

City Attorney said that he does have some samples and a typical policy deals with who you will issue proclamations to, what type of organization or activity and also with a process of do individual Council Members request them, does it go through the City Manager, does it go through the Mayor, etc. So we can come back with some sample policies and look at them and then have some dialogue and then give staff direction as to whether you want the policy.

City Manager said if a majority of the Council would like staff to look into a policy for proclamations, staff would bring back some samples for you to look at otherwise staff will not do anything.

**After some further Council discussion there was consensus in regards to looking at some policies.**

#### ADJOURNMENT

By common consent the meeting adjourned at 6:20 p.m. in memory of those that gave their lives in New York eleven years ago.

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Marie A. Calderon, City Clerk

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

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

10/23/12  
SPECIAL MEETING

A special meeting (workshop) of the Banning City Council and a special joint meeting of the Banning City Council and the City Council Sitting In Its Capacity of a Successor Agency (closed session) was called to order by Mayor Robinson on October 23, 2012 at 3:00 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  
Jeff Stowells, Battalion Chief  
Doug Clarke, Fire Marshall  
David J. Aleshire, City Attorney  
June Overholt, Administrative Services Dir./Deputy City Manager  
Zai Abu Bakar, Community Development Director  
Marie A. Calderon, City Clerk

WORKSHOP ITEM

1. Emergency Preparedness/Disaster Operation and Relief

City Manager addressed the Mayor and Council stating that he just passed out the Emergency Management Organization Chart which they will be going over tonight and also discuss having meetings periodically in order to keep the emergency preparedness committee aware of what is going on. In attendance are Jeff Stowells, Battalion Fire Chief and Doug Clarke, Fire Marshall and they will be able to answer any questions the Council may have on this item. City Manager stated that Doug has been doing a lot of emergency preparedness training and he didn't want to do anything just yet until Doug has completed his training.

City Manager said that the EOC (Emergency Operations Center) that was located on Wilson and Mountain is now being transferred over to the Banning Police Department and this is being done for several reasons and one is size. Size does matter and most EOC's when they are occupied for major disasters such an earthquake there are multiple rooms that can be utilized and also city hall can be used if it is still standing. Our current Emergency Preparedness Plan is being updated to reflect that move and that Plan should be in front of the Council the next time we meet. At this time the City Manager went over the Emergency Management Organization

Chart and stated that the roll of the Mayor and the Council will probably be more of a spokesperson as far as being with the Public Information Officer.

City Manager asked the Council if every other month was too much for the Council as far as going through this exercise or once a quarter. We would have to go through the Disaster Preparedness Manual that is being updated right now and once that is ready it will be presented to the Council for questions and should be ready in about two months. **There was a consensus of the Council to do this at least a quarterly.**

There was further Council and staff discussion in regards to being prepared, the kind of emergency event that might occur, SEMS (State Emergency Management System) and NIMS (National Incident Management System) training of staff because of the need to get reimbursement from FEMA (Federal Emergency Management Agency), when the EOC should be opened, concern regarding employees that live outside the area should a disaster occur, and the need for the Council to appoint successors.

Mayor Robinson opened the item for public comments.

Dorothy Familetti-McLean addressed the Council stating that she attends the Passcom meetings as does Mayor Pro Tem Franklin and other people in this room but as far as she knows there is no representation from the City of Banning at the Passcom meetings and she doesn't understand why.

Mayor Pro Tem Franklin said that Fire Marshall Doug Clarke does attend those meetings. So we do have a City representative.

#### ADJOURNMENT

Mayor Robinson adjourned the meeting workshop at 3:25 p.m. and called to order the Special Meeting Closed Session at 3:26 p.m.

#### CLOSED SESSION

City Manager announced the closed session items as follows:

- Council will meet in closed session to confer with its attorney regarding two cases of potential litigation pursuant to the provisions of Government Code Section 54956.9.
- Council will meet in Closed Session pursuant to Government Code Section 54957 with regards to City Manager evaluation.
- Council will meet in closed session in regards to Conference with Labor Negotiators pursuant to Government Code Section 54957.6. City is represented by City Manager, City Attorney and Administrative Services Director. Negotiations are with International Brotherhood of Electrical Workers (IBEW) – Utility Unit, International Brotherhood of Electrical Workers (IBEW) – General Unit, Banning Police Officers Association (BPOA), and City of Banning Association of Managers (CBAM).

- The City Council and the Successor Agency Board will meet in closed session pursuant to the provisions of Government Code Section 54956.8 to confer with its real property negotiator, Andrew Takata, Executive Director in regards to:
  - 42 W. Ramsey Street – APN: 540-204-010 (Successor Agency Item)
  - 260 W. Ramsey (APN 540-202-002; 60 S. Third Street (APN 540-203-003) and 33 S. San Geronio Avenue (APN 540-204-009) – Matthewson's. (City Council Item)

Mayor Robinson opened the item for public comments. There were none. Meeting went into closed session at 3:28 p.m. and reconvened at 5:05 p.m.

#### ADJOURNMENT

By common consent the meeting adjourned at 5:05 p.m.

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Marie A. Calderon, City Clerk

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

10/23/12  
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the Banning City Council and the Banning Utility Authority was called to order by Mayor Robinson on October 23, 2012 at 5:15 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

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

The invocation was given by Pastor Elder Preston. Councilmember Machisic invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney announced that the Council met in closed session and discussed labor negotiations and a status report was given and no reportable action was taken. They also discussed real property negotiations at 42 W. Ramsey Street and 260 W. Ramsey, 60 Third Street and 33 San Gorgonio Avenue and a status report was given and no reportable action was taken. There was a status report and discussion regarding potential litigation and there was no reportable action taken. There was a closed session concerning the evaluation of the City Manager and no reportable action was taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

Dorothy Familetti-McLean addressed the Council stating that two weeks ago she spoke about Pass Area Supporting Soldiers (PASS) having their donation drive and it runs through November 12<sup>th</sup>. Donations for our troops serving overseas can be dropped off at Banning City Hall, Banning Community Center, Banning Chamber of Commerce, the Farmhouse Restaurant, Beaumont Chatiney Center, Calimesa Senior Center, and Faith Builders Family Church. On Wednesday, Nov. 14<sup>th</sup> they will be at the Banning Community Center from 9 a.m. to noon if anyone is interested and would like to help. If you need more information, call Sandy Blier at 951-880-7085.

Marty Coyne, Coyne Motorsports said he wanted to report to the Council that they finally got their dealership open. They had kind of a "soft opening" and they are still working out the bugs and today was the final day that they got Yamaha to sign off. Originally they were going to open this up as a pre-owned dealership but they decided to make a strategic move and ended up moving their Indio location to Banning which gave them new franchises right a way and they did get the support of Yamaha being final today and also Polaris, Sea Doo, Can-Am and Husqvarna so that is great news for the city and they are already experiencing folks coming from the Coachella Valley and spending their money here in Banning. They are tentatively planning their grand opening for the first week in November. He thanked the Andy Takata, City Manager and Zai and her staff and the building and planning department in making this all come together and the Council. He said that they are done with Phase 1 and their next step is Phase 2 and part of that is to add 10,000 square feet. Mr. Coyne said that they are located at 2301 W. Ramsey Street, Banning, CA.

CORRESPONDENCE: None

PRESENTATIONS:

1. Banning Stagecoach Days Committee Presentations

Bill Lamb, Chairman for Banning Stagecoach Days gave some information in regards to their event just held. They were able to bring back a rodeo and they had it for one day and it proved to be a huge success. Overall their gate increased from last year. Last year they made \$13,000 at the gate and this year because of the rodeo it jumped up to \$15,000. He feels now that they are committed to go to a two-day rodeo next year and obviously the gate will increase next year with a two-day rodeo. After looking at the income and expense report for the year they had a total income of \$50,180 (sponsorships, fundraisers and the gate); their expenses were at \$47,982 which gave them a total income of \$2,198. Also they have had a couple of sponsorship checks that came in and increased their bottom line. One thing that they tried to do this year was to have the event pay for itself. As everyone knows this is a volunteer event and they appreciate the in-kind services from the City and they are pleased that they don't have to come to the City to ask for money to put on the event.

At this time Mr. Lamb made the following presentations: Silver Spur Plaque to Bill Hawk of Lamar Outdoor Advertising which donated the use of a billboard at a cost of about \$3,000; Golden Nugget Plaque to I.B.E.W. (International Brotherhood of Electrical Workers) representatives Helen Barnes and John which have been with them for about three years



donating \$2,500; and Platinum Saddle Sponsor presented to Mayor Robinson for the City of Banning for their support of in-kind services in an amount of approximately \$10,000.

2. Life Saving Awards to Officer Babcock and Office Bennett

Chief Purvis commented that on October 15, 2012 at about 6:15 p.m. dispatch advised patrol personnel of a possible drowning victim at the Sun Lakes Country Club's Main Clubhouse swimming pool. Officer Babcock arrived at the location within three minutes of the call and discovered an unconscious 44 year old male in the pool whose head was being held just above the water by his fiancée. Officer Babcock pulled the victim from the pool and assessed his vital signs and recognizing the victim was not breathing and had no pulse he immediately started CPR on the victim. Officer Bennett arrived a short time later and assisted Officer Babcock with life-saving efforts. Through their devoted efforts and actions they continued their life-saving efforts until they were relieved by CalFire personnel. Because of their devotion to duty and team effort the victim survived. Their actions brought credit upon the Banning Police Department and the City of Banning and he is very proud of their commitment to protect and serve all members of the community with honor and distinction. At this time Chief Purvis presented the Life Saving Awards to Officer Babcock and Office Bennett.

3. Ramsey Street Villas – Fred Lawson

Mr. Lawson addressed the City and the City Council for their support to make this project what it is. He said at the end of the road they got the building completed and had the final inspection for the interior and the only thing left is the elevator and the smoke detector and he hopes to have this all completed by next week. His goal is to have some kind of leasing some time next month. Also, he said that Councilmember Franklin had approached him about trying to do something with that project to make it something for veterans. In this area we really don't have any significant shelter for veterans and felt this would be a great project for the City to consider. For the last six months or longer she has been working with him to try to come up with a project or system to make these residences for veterans and he feels that they are at a point to make this materialize. Also, in regards to the restaurant he had an 18 month extension on that issue and that is something he really hasn't had any success with at this point. He had a lot of people that had interest but no one has brought any money to the table to get it off the ground. He said he has 22 units and has received a lot of phone calls regarding leasing.

Mayor Pro Tem Franklin added that part of the whole project or the idea was to 1) have veterans actually living there; 2) have case management there available to the veterans in the area so they have access to resources year-round; and 3) see if there was a way to have the kitchen finished as a culinary training center so that the veterans have an opportunity to get some training and a marketable skill. Part of the problem has been that we started working on this a year ago and we've talked to multiple organizations that say they can do it but found out that they couldn't. Now we have been in touch with an organization called "Stand To-Stand Down" which is a non-profit in San Bernardino and they seem to have the wherewithal to be able to help move to the next level. So one of the things they did say was that we should have the support of the City.

There was some Council discussion in regards to Mr. Lawson's efforts and leasing to both to veterans and non-veterans.

Kismet Evans, CEO of Inland Empire Veterans Stand Down in San Bernardino addressed the Council stating that they provide services to homeless veterans and their families in the Inland Empire and have been doing this since 2006. Their program consists of outreach to the veterans and it is a very comprehensive program. She said that Mr. Lawson has a program that they would love to implement. It would be a perfect opportunity in the city of Banning to provide those outreach services in getting our men and women off of the streets into a program within an agency that really cares about their welfare on a long term basis and that is what you have to do with these individuals. This a long, long process and as a woman who has had that history she can't tell you how imperative it is that that they have Council's support and they are asking for Council's support because they will need that support to bring in resources, other collaborative partners within the agency, the VFW and the community. It cannot thrive without the community being involved; the police, the fire department because these are the individuals who see where the veterans are and see where the homeless are so we definitely need their support. She introduced her co-founder, Leroy Huff who did five tours of duty in Vietnam and he is the Outreach Director of the Program.

Mr. Huff addressed the Council stating that he was very impressed with the City of Banning because they came forward and asked to support the veterans. Their headquarters is in San Bernardino but they travel the whole Inland Empire. When he was told that Banning was on-board to support veterans and get this program on-board he said this is a first. He said that veterans and future veterans need help and it is imperative that we help veterans because the VA cannot do everything. What he has found out is that it is the community that heals veterans. He thanked the Council for wanting to support our veterans.

### CONSENT ITEMS

Mayor Pro Tem Franklin pulled Consent Item No. 9 for discussion and Mayor Robinson pulled Consent Item No. 6 for discussion.

1. Approval of Minutes – Special Meeting – 10/09/12 (Closed Session)

Recommendation: That the City Council approve the minutes of the Special Meeting of October 9, 2012.

2. Approval of Minutes – Regular Meeting – 10/09/12

Recommendation: That the City Council approve the minutes of the Regular Meeting of October 9, 2012.

3. Approval of Minutes – Special Meeting – 10/16/12 (Closed Session)

Recommendation: That the City Council approve the minutes of the Special Meeting of October 16, 2012.

4. Resolution No. 2012-67, Authorizing the City to Access State and Federal Level Summary Criminal History Information through the California Department of Justice and Establishing a Criminal Background and Live Scan Policy.

Recommendation: That the City Council adopt Resolution No. 2012-67.

5. Resolution No. 2012-74, Approving the Amendment to the Jt. Powers Agreement of the Western Riverside Council of Governments to Permit the Provision of Pace Services Statewide.

Recommendation: That the City Council adopt Resolution No. 2012-74.

7. Resolution No. 2012-81, Approving Payment for Reimbursement of Asphalt Repairs to the Sun Lakes Country Club.

Recommendation: That the City Council adopt Resolution No. 2012-81.

8. Resolution No. 2012-82, Approving a Professional Services Agreement to Western Riverside Council of Governments for Residential and Commercial Diversion Services.

Recommendation: That the City council adopt Resolution No. 2012-82, Awarding a Professional Services Agreement to Western Riverside Council of Governments for Residential and Commercial Diversion Services in the amount of \$100,000.00 (\$50,000.00 per year for FY 2012/2013 and FY 2013/2014).

**Motion Hanna/Botts to approve Consent Items 1 through 5 and 7 and 8.** Mayor Robinson opened the item for public comments. **There were none. Motion carried, all in favor.**

6. Resolution No. 2012-79, Approving the Updated Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement.

Mayor Robinson said he wanted some explanation of what this was all about.

Fred Mason, Electric Utility Director gave the staff report on this item as contained in the agenda packet. He said that this is approving an update to an existing program that we have that provides incentives, basically a rate reduction, economic development rate program for new businesses and existing businesses that come into town or expand their existing business in town. When this was initially set up in 2010 it was with the intention of attracting larger businesses such as a full-size supermarket or a large manufacturing firm with a minimum demand of 200 kilowatts. It allows us to attract restaurants, small to medium size businesses that meet the minimum 20 kilowatt demand threshold. This is going to be a great tool for Bill Manis to go out and recruit businesses and it is also going to help the smaller to medium size businesses that are here in Banning that may want to expand or move to a new larger facility which will provide more electrical demand.

Mayor Robinson asked if there was going to be any effect on existing businesses or resident rates by lowering the standard down to 20 kilowatts.

Director Mason said no, this is for the Schedule C customers and those are customers that have to have a minimum of 20 kilowatts to be eligible for the rate. This rate has a demand component. City Manager and Director Mason gave further explanation on this rate and Director Manis said this is a wonderful tool and explained how this incentive will help new and expanding businesses.

There was some further Council and staff discussion regarding some other programs to help new and expanding businesses.

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

**Motion Franklin/Machisic that the City Council adopt Resolution No. 2012-79. Motion carried, all in favor.**

9. Resolution No. 2012-83, Approving and Adopting a Manual of Policies and Procedures for the Conduct of Meetings by City Legislative Bodies.

Mayor Pro Tem Franklin said that she had a couple of questions that came up from the public and wanted to make sure that everybody understood especially in regards to the speaker cards and when people have to give their names and whether or not they are able to come up to speak when speaker cards are used.

City Manager said the Council has already gone on record not to use speaker cards and this is just for the future.

City Attorney said that speaker cards are a commonly used mechanism. Mostly they are used so that the City Clerk ends up with a clear written record on the spelling and street addresses and so forth. This was brought before the Council a couple of times and as a general comment the City through the years had some procedures that were inconsistent and were not clearly spelled out so the idea here was to kind of set all of this up in a uniform manner. With regards to speaker cards even though you are not using them currently when it was discussed previously it seemed if we put it in here if you ever decide to use them, you don't have to come back and amend the manual. Just because it is in this manual does not mean that you need to use it. Even with regards to speaker cards if you were using them, you cannot be required under the law to fill out a card in order to exercise your first amendment rights. There seems to be a public concern, not just in Banning but in other cities, whether this is going to be used as some mechanism to keep people from speaking.

Mayor Pro Tem Franklin said also the Council cannot preclude anybody from speaking either because we say that we have heard enough.

City Attorney said that the speaker card doesn't deal with that but we do have rules that give some discretion on the part of the chair to try to make sure that the way the hearing is conducted we have procedures that are going to apply to both sides.

Mayor Pro Tem Franklin said that he touched on the third item she had which was in regards to consistency and the amount of time that we have for the public to speak and one thing that was suggested was that for public comments we give three minutes but if you are speaking on an item that is on the agenda, it is five minutes but if there is a way to be consistent and allow five minutes because usually even in the public comment time people only need maybe a minute or so to wrap up what they are talking about. She would like to suggest that we allow up to five minutes in the public comment time also so that we are consistent and also work on making sure we are consistent and fair in everything we are doing.

City Attorney said that there was another provision in these rules that says the objective of the hearing is to be fair and the Chairperson as they are conducting the hearing is required to be fair and also if the Chairperson were acting out of line, the majority on the Council can overrule a ruling by the Chair.

Mayor Robinson said in regards to the Brown Act as he understands the Brown Act has been stopped by the Governor but this board has said we want to continue along those same lines. Is this tied to a Brown Act that is really not in effect any more by the State?

City Attorney said the issue with the Brown Act is that there is a State law that says if the State requires you to do some things, the State has to pay local agencies for things that they make you do and there are things in the Brown Act that create an expense for us. For example, when we do the posting or noticing requirement, State law requires us to do that, so they would have to reimburse us for those expenses. Given the State emergency the State has basically suspended any provisions in the Brown Act that would require the State to reimburse us so those are suspended. There are certain provisions in the Manual that we were doing under the Brown Act and we presume that at some point in time we will be required to do those things again. For example, in terms of the noticing, the things that the State was requiring us to do we would probably do anyway so this Council took the position that you wanted to continue complying with those requirements. It was kind of a public expectation.

Mayor Robinson opened the item for public comments.

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

Inga Schuler, resident of Banning

Adam Buchanan, City Council Candidate residing on Cottonwood

Gary Hironimus

Gentleman from the audience (decline to state name)

There was further Council and staff discussion regarding transparency, speaker cards and the time given to speak and being consistent.

**After discussion there was Council consensus to leave the time limits at 3 (public comments) and 5 (items on the agenda) minutes.**

There was further Council discussion in regards to speaker cards.

**Councilmember Botts moved approval of this item.**

Mayor Robinson asked for a second to the motion. Councilmember Machisic asked what is the motion. Mayor Robinson said the motion is to accept Resolution No. 2012-83 as written, approving and adopting a Manual of Policies and Procedures for the Conduct of Meetings by City Legislative Bodies.

**Councilmember Botts said he should have stated, “and removing the section of Speaker Cards” to his motion of approval of this item. Motion seconded by Councilmember Hanna. 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

1. Resolution No. 2012-12 UA, Awarding the Construction Contract for Project No. 2010-05R, Irrigation Water Line – Segment A and Rejecting all Other Bids and Approving Related Professional Services Agreements and Purchases.

Councilmember Hanna request that this item be taken off Consent for discussion.

Duane Burk, Director of Public Works gave the staff report on this item as contained in the agenda packet. He said that this is Phase 1, Segment A of the Recycled Water Line sometimes referred to as the “purple pipe”. It has been a strategic goal by the Council to move this project forward.

There was Council and staff discussion regarding labor and product; why we need this pipe; why the need to do this section now; and time frame to get construction done and other impacts to the public.

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

**Motion Hanna/Botts that the City Council: 1) adopt Resolution No. 2012-12UA, Awarding the Construction Contract for Project No. 2010-05R, “Irrigation Water Line – Segment A” to Tri Star Contracting II, Inc. of Desert Hot Springs, California for an**

**amount of \$908,080.54 and allowing a 15% contingency of \$136,212.00; 2) Approving the Professional Services Agreement for Surveying and Construction Staking Services with Albert A. Webb Associates of Riverside, California, for an amount of “Not to Exceed” \$27,900.00 and a Professional Services Agreement for Construction Material Testing Services with Aragon Geotechnical, Inc. of Riverside, California, for an amount of “Not to Exceed” \$27,645.00; 3) Approving the purchase of materials from Pacific States Cast Iron Pipe Company in the amount of \$674,620.87; 4) Authorizing the Administrative Services Director to appropriate \$1,774,458.41 from the Irrigation Water Fund to Account No. 662-6300-471.95-12 and to make the necessary budget adjustments, appropriations and transfers to fund this project and to approve change orders within the 15% contingency of \$136,212.00; and 5) Authorizing the City Manager to execute the contract agreements for Project No. 2010-05R, “Irrigation Water Line – Segment A”. Motion carried, all in favor.**

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

#### ORDINANCES-INTRODUCTION

1. Ordinance No. 1457 and Urgency Ordinance No. 1458, Setting forth a procedure for the rotation of the office of mayor and other positions held by council members. Proposed Ordinances are presented in both standard and urgency form to ensure it is in effect for mayoral appointment this year.  
Recommendations: 1) Waive further reading and adopt Ordinance No. 1457; and 2) Waive further reading and adopt, *by fourth-fifths vote*, Urgency Ord. 1458 (Staff Report – David J. Aleshire, City Attorney)

City Attorney gave the staff report on this item stating that the Council established a system to rotate offices through the various Councilmembers by establishing an order of ranking of the different offices that Councilmembers hold. This ordinance sets the positions of Mayor, Mayor Pro Tem, Chair of the Housing Authority, Vice Chair of the Housing Authority and the fifth spot would be the Mayor after their term as Mayor would go down to that fifth spot.

There was Council and staff discussion regarding a vote to be taken to put people in these positions.

Councilmember Hanna said in regards to No. 5 on page 127 she thought it would be worthwhile since we have an election coming that we just kind of lay this out quite clearly and as she understands it Debbie Franklin will be the Mayor next year, Bob Botts will be the Mayor Pro Tem, and if an incumbent is re-elected then Don Robinson would be third in line and is that correct. Then the newly elected persons would be determined by the number of votes as fourth and fifth.

City Attorney said that is correct. And then again actually when you are meeting as the Housing Authority this ordinance exists and it is presumed that the members of the Housing Authority will then pick for their Chair the person that really falls under this ordinance.

Mayor Robinson asked the City Clerk to read the title of Ordinance No. 1457. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Amending Ordinance No. 1442, Setting Forth a Procedure for the Rotation of the Office of Mayor and Other Positions Held by Council Members.

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

**Motion Botts/Machisic to waive further reading of Ordinance No. 1457. Motion carried, all in favor.**

**Motion Hanna/Botts that Ordinance No. 1457 pass its first reading. Motion carried, all in favor.**

Mayor Robinson asked the City Clerk to read the title of Ordinance No. 1458: City Clerk read: An Urgency Ordinance of the City Council of the City of Banning, California, Amending Ordinance No. 1442, Setting Forth a Procedure for the Rotation of the Office of Mayor and Other Positions Held by Council Members.

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

**Motion Machisic/Franklin to waive further reading of Ordinance No. 1458. Motion carried, all in favor.**

**Motion Franklin/Hanna that Ordinance No. 1458 be adopted. Motion carried, all in favor.**

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

City Council

Councilmember Hanna –

- The Pass EDA (Economic Development Association) is having their monthly meeting this Friday at the Morongo Casino in the ballroom and the cost is \$15.00. Representatives both from the City of Beaumont and City of Banning will be talking each of our Centennial Celebrations so if you are interested in hearing more about the centennial, you might consider attending that meeting.

Mayor Pro Tem Franklin –

- She said at the last Community Action Partnership meeting she attended they had a presentation from California Phones and she doesn't know if people are aware of this but they can get phones free if they are hard of hearing, hard of seeing and also if they have any difficulty in being able to move. It is not restricted by income or by where you live. The form is very simple to complete and you can also do it on-line and it is just a matter of minutes for them to be able to approve it. They have approximately 10 phones that you can make selection from and you can go into their office or by having an appointment for them to come to your house. Also, if you have a child in the household that needs to be able to use a phone and has some kind of disability, you can get a phone for them also.



- She is on the advisory board for First 5 and they received the "Community Indicators Report" and it gives a lot of information about the whole county so it will be will staff if anyone would like to review it.
- She congratulated The Banning United Methodist Church on their upcoming 125 Year Anniversary here in our City.
- Congratulations to the Fireman's Memorial that was done by the United States Forest Service. She and the Mayor were able to attend the event held on Saturday.

Mayor Robinson –

- He said that BPAL (Banning Police Activities League) did an outstanding job over this last week putting a fundraiser together for the good of kids in regards to "Shop With A Cop".

City Committee Reports - None

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

Report by City Manager

- The County of Riverside is conducting a community meeting on Thursday, Nov. 15<sup>th</sup> regarding the I-10 Bypass and will be held at the Banning High School Multi-Purpose Room from 5 to 7:30 p.m.
- The South Coast Air Quality Management District (SCAQMD) is conducting a community meeting with residents that live adjacent to the Robertson's Mine on Nov. 20<sup>th</sup> from 6 to 7:30 p.m. at the Banning Senior Center Multi-Purpose Room.
- Last week the State of the City was held and he would like to thank the Council and staff for participating in that event.
- City Manager said that he passed his evaluation. He thinks that the Council is pleased overall with the last year or so but it is all because of the staff we have and they have done a wonderful job and he thanks them.

## ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials

## ADJOURNMENT

By common consent the meeting adjourned at 6:55 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.**

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ORDINANCE NO. 1457

2nd Read

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF BANNING, CALIFORNIA, AMENDING  
ORDINANCE NO. 1442 SETTING FORTH A  
PROCEDURE FOR THE ROTATION OF THE  
OFFICE OF MAYOR AND OTHER POSITIONS  
HELD BY COUNCILMEMBERS**

**WHEREAS** the City of Banning is currently operating under Ordinance No. 1442, setting forth a procedure for the rotation of the office of mayor and other positions held by Councilmembers;

**WHEREAS** Ordinance No. 1442 rotates each of the five (5) members of the City Council through the position of Mayor, Mayor Pro Tem, Chair of the Community Redevelopment Agency ("Agency"), Chair of the Housing Authority ("Authority"), and Vice Chair of the Agency and Vice Chair of the Authority;

**WHEREAS** redevelopment agencies were dissolved in the State of California on February 1, 2012, pursuant to ABx1 26 and AB 1484, thereby eliminating the positions of Chair of the Agency, and Vice Chair of the Agency; and

**WHEREAS** it is necessary to change the rotation established by Ordinance 1442 to eliminate the offices of the former Agency.

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

SECTION 1.

Section 2.04.070 of the Banning Municipal Code is amended to read in its entirety as follows:

"2.04.070. Rotation of Mayor and Other Offices

- A. General. The City of Banning has a council/manager form of city government. All five members of the city council are elected at large to four-year terms. Additionally, the city has related agencies including the housing authority. These entities have various officers, including chair person and vice chair person. The city council believes that all councilmembers have the capability of performing these offices and should be given the opportunity to do so through a rotational system.
- B. Rotation of councilmembers through the office of mayor and other offices.

1. The mayor shall be selected by a majority vote of the councilmembers in December of each year, which shall be known as the annual organization meeting, for a one-year term.
  2. The persons serving as councilmembers of the city shall rotate through certain offices of the city and its constituent agencies in the order stated below, with the person serving as mayor rotating to hold no office for the subsequent term, or the highest unfilled office available in the rotation after the rotation of other incumbent councilmembers (pursuant to the "rotational succession list" below), following their completion of their term as mayor.
    - (a.) Mayor.
    - (b.) Mayor pro tem.
    - (c.) Chair of the housing authority.
    - (d.) Vice chair of the housing authority.
  3. With the rotation of the person holding the office of mayor, all other members shall move up one position, in order that the outgoing mayor pro tem shall become the new mayor, the outgoing chair of the housing authority shall become the new mayor pro tem, the outgoing vice chair of the housing authority shall become the new chair of the housing authority, and the outgoing councilmember having no office shall become the new vice chair of the housing authority. The outgoing mayor shall have no office for the subsequent term.
  4. If any councilmember should decline to serve in the position to which they would rotate to, they shall fall to the bottom of the rotation, and hold.
  5. At the first annual organizational meeting following any council election, the rotation to the highest available office shall be made amongst the incumbent councilmembers. Thereafter, the unfilled offices shall be filled by any newly elected member of the council. If there is more than one newly elected member, then the order among the new members shall be determined by the person who received the highest number of votes at the election taking the highest available office.
- C. Removal. With a majority vote of the body, any officer holding any office governed by the rotational policy may be replaced, but in general, such changes should not be made in midterm, and if made, the rotation established hereunder shall be utilized to advance every officer to the next level.

- D. Vacancies. Any councilmember appointed to fill a vacancy shall be added immediately to the bottom of the rotational succession list, and all other members on the succession list shall move up to a higher ranked position, if any.
- E. Office of the mayor pro tem. The mayor pro tem will serve as mayor in the event of the absence of the mayor and will be appointed as the mayor when there is a vacancy in the office of mayor. The selection of the mayor pro tem will follow the rotation policy stated above in subsection 2.04.070(A).
- F. Duties. The mayor, if present, shall preside as chairperson at all meetings of the city council. In the absence of the mayor, the mayor pro tem shall preside. In the absence of both the mayor and mayor pro tem, the next officer in the rotation succession list shall serve as chairperson. The chairperson shall preserve order and decorum. The chairperson may make or second any motion and present and discuss any matter as a member of the city council. The person serving as mayor accepts the responsibility to be the city's official representative for all events where representation is necessary, except where otherwise provided by the council, and for signing all contracts and official documents and correspondence.

#### SECTION 2. Effective Date.

The City Clerk shall certify to the passage and adoption of this ordinance by the City Council of the City of Banning and shall, within 15 days after its final passage, cause the same to be published once in the Record Gazette, a newspaper of general circulation which is hereby designated for that purpose. This ordinance shall take effect 30 days after its passage.

#### SECTION 3. Severability.

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

#### SECTION 4. Supersedes.

The provisions of this ordinance supersede any conflicting resolutions or ordinances, and any such resolutions or ordinances shall be construed in such a manner as to carry out the intent of this ordinance.

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

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

**ATTEST:**

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

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

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1457 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 23<sup>rd</sup> day of October, 2012, and was duly adopted at a regular meeting of said City Council on the \_\_\_\_\_ day of November, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** November 13, 2012

**TO:** City Council

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

**SUBJECT:** Accept Grant of Easement from O'Donnell Group, Parcel 1/APN 532-110-010 and Parcel 2/APN 532-110-008, for Proposed Water Well Exploration/Drilling Project

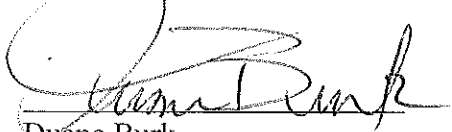
**RECOMMENDATION:** Accept the Grant of Easement from O'Donnell Group, Assessor's Parcel Number 532-110-010/008, for the temporary access to the water well site located within the O'Donnell project, and direct the City Clerk to accept and record said easement. The parcel is described in the attached Exhibit "A" and "B".

**JUSTIFICATION:** It is essential that the City accept the easement, as described and shown on the attached Exhibit "A" and Exhibit "B", respectively, in order for the city to be able to access the site and conduct the proposed Water Well Exploration/Drilling Project.

**BACKGROUND:** The City is exploring the possibility of obtaining the well site as part of the condition of the O'Donnell Banning Business Park Project. In order to be able to complete the project, the City needs the easement from O'Donnell Group and the developer has agreed to dedicate said easement to the City as shown attached herewith as Exhibit "A" and "B". The proposed easement lies within the proposed public street which will be dedicated to the City through the approval of the Parcel Map.


**FISCAL DATA:** N/A

**RECOMMENDED BY:**



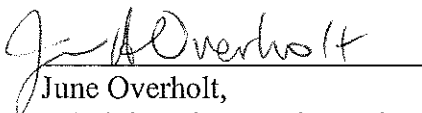
Duane Burk,  
Director of Public Works

**APPROVED BY:**



Andy Takata,  
City Manager

**REVIEWED BY:**

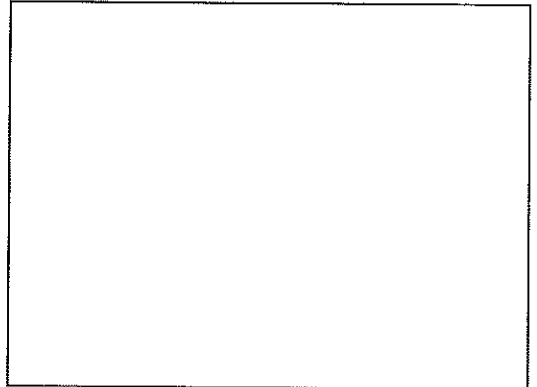


June Overholt,  
Administrative Services Director/  
Assistant City Manager

**When recorded Mail To:**

City Clerk  
City of Banning  
P.O. Box 998  
Banning, CA 92220

**NO RECORDING FEE PER SECTION  
6103 OF THE GOVERNMENT CODE.**



SPACE FOR RECORDER'S USE

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the Grant of Easement, as attached herein as Exhibit "A" and Exhibit "B" to the CITY OF BANNING, a municipal corporation is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council; and the grantees consent to recordation thereof by its duly authorized agent.

Dated: \_\_\_\_\_, 2012

CITY OF BANNING, A Municipal Corporation

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



**EXHIBIT "A"**  
**TEMPORARY ACCESS EASEMENT**

THOSE PORTIONS OF THE NORTHWEST 1/4 OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**PARCEL 1:**

COMMENCING AT THE NORTHEASTERLY CORNER OF SAID NORTHWEST 1/4 OF SECTION 11;

THENCE, ALONG THE EASTERLY LINE OF SAID NORTHWEST 1/4 OF SECTION 11, SOUTH 00°41'48" WEST, 138.11 FEET TO THE **POINT OF BEGINNING**;

THENCE, TRAVERSING THE INTERIOR OF SAID NORTHWEST 1/4 OF SECTION 11, THE FOLLOWING COURSES:

NORTH 89°18'12" WEST, 50.00 FEET;

SOUTH 00°41'48" WEST, 36.02 FEET;

SOUTH 45°41'48" WEST, 11.30 FEET;

NORTH 89°18'12" WEST, 171.01 FEET;

NORTH 00°41'48" EAST, 100.00 FEET;

SOUTH 89°18'12" EAST, 179.00 FEET;

SOUTH 00°41'48" WEST, 35.99 FEET;

SOUTH 89°18'12" EAST, 50.00 FEET TO SAID EASTERLY LINE OF THE NORTHWEST 1/4 OF SECTION 11;

THENCE, ALONG SAID EASTERLY LINE OF THE NORTHWEST 1/4 OF SECTION 11, SOUTH 00°41'48" WEST, 20.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 0.43 ACRES, MORE OR LESS.

**EXHIBIT "A"**  
**TEMPORARY ACCESS EASEMENT**

**PARCEL 2:**

A STRIP OF LAND 20.00 FEET WIDE, THE EASTERLY AND SOUTHERLY LINES OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF SAID NORTHWEST 1/4 OF SECTION 11;

THENCE, ALONG THE EASTERLY LINE OF SAID NORTHWEST 1/4 OF SECTION 11, SOUTH 00°41'48" WEST, 138.11 FEET TO THE **POINT OF BEGINNING**;

THENCE, CONTINUING ALONG SAID EASTERLY LINE OF THE NORTHWEST 1/4 OF SECTION 11, SOUTH 00°41'48" WEST, 1193.00 FEET;

THENCE, TRAVERSING THE INTERIOR OF SAID NORTHWEST 1/4 OF SECTION 11, THE FOLLOWING COURSES:

NORTH 89°21'58" WEST, 1317.72 FEET;

SOUTH 89°56'44" WEST, 1287.80 FEET TO A LINE PARALLEL WITH AND 30.00 FEET EASTERLY OF THE WESTERLY LINE OF SAID SECTION 11.

THE NORTHERLY LINE OF SAID STRIP SHALL BE LENGTHENED OR SHORTENED TO END AT SAID LINE PARALLEL WITH AND 30.00 FEET EASTERLY OF THE WESTERLY LINE OF SECTION 11.

ALSO AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND HEREBY MADE A PART HEREOF.

SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD, IF ANY.



PREPARED BY: STANTEC CONSULTING INC.  
UNDER THE DIRECTION OF:

  
JAMES O. STEINES, P.L.S. 6086

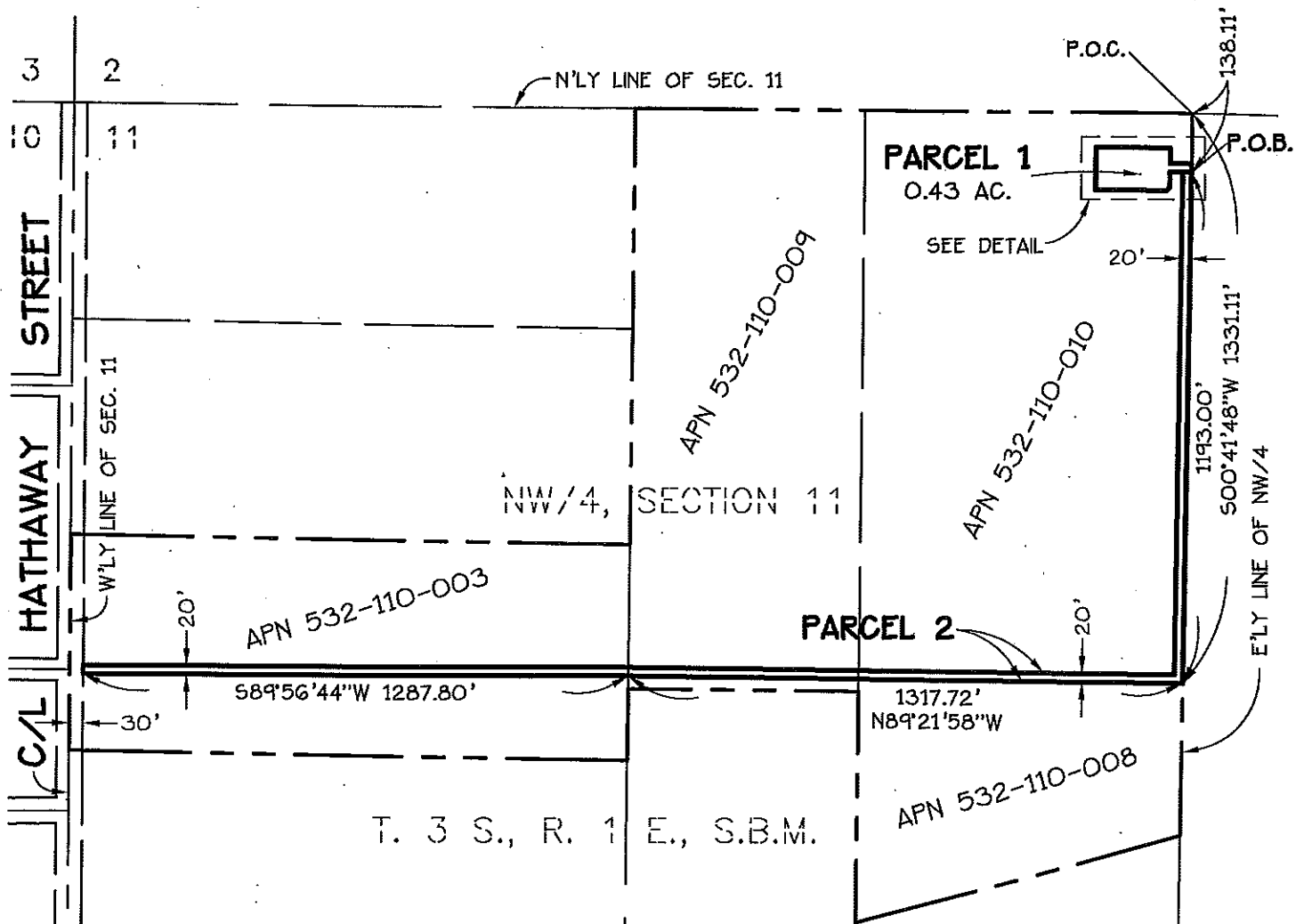
OCTOBER 15, 2012  
J.N. 2042 473201

# EXHIBIT "B"

SHEET 1 OF 1

BEING A PORTION OF THE NW 1/4 OF SECTION 11, T. 3 S., R. 1 E., S.B.M.,  
IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

## TEMPORARY ACCESS EASEMENT



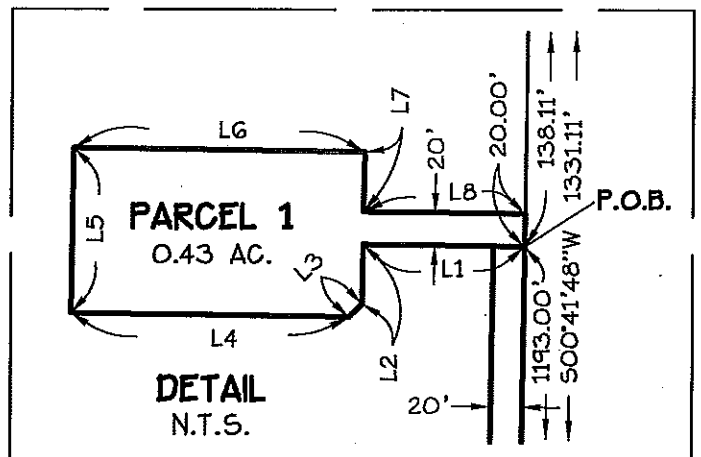
LINE TABLE		
NO.	BEARING	DISTANCE
L1	N89°18'12"W	50.00'
L2	500°41'48"W	36.02'
L3	S45°41'48"W	11.30'
L4	N89°18'12"W	171.01'
L5	N00°41'48"E	100.00'
L6	S89°18'12"E	179.00'
L7	500°41'48"W	35.99'
L8	S89°18'12"E	50.00'



SCALE: 1" = 400'



*James O. Steines*  
 JAMES O. STEINES, P.L.S. 6086



Stantec

**STANTEC CONSULTING INC.**  
 19 TECHNOLOGY DRIVE  
 IRVINE, CA 92618  
 949.923.6000

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 stantec.com

## CITY COUNCIL AGENDA

**Date:** November 13, 2012  
**To:** City Council  
**From:** Jeff Stowells, Fire Services Battalion Chief  
**Subject:** Resolution authorizing the City of Banning to accept a Mass Care Trailer from the County of Riverside.


**RECOMMENDATION:** The City Council adopt Resolution No. 2012-14, authorizing the acceptance of a Mass Care Trailer from the County of Riverside for use within the City of Banning.

**JUSTIFICATION:** The County of Riverside is providing this trailer equipped with 3 standard carts containing 30 cots, 180 blankets, 1 enhanced cart containing 10 enhanced needs cots, and 20 blankets.

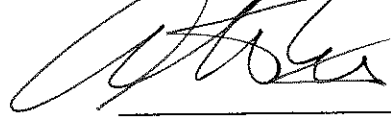
**BACKGROUND:** Being in an area that is prone to earthquakes and other natural disasters this self-contained trailer will provide 100 cots and 200 blankets to the city at little cost for its residents use in a disaster.

**FISCAL DATA:** The total value of the trailer complete with carts, cots, blankets and generator is \$12,699.50. If accepted, the city is responsible to maintain the trailer in a ready state, pay the cost to register the trailer with DMV and to replace lost, stolen, or damaged equipment.

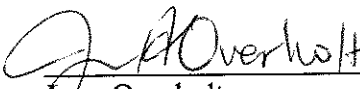
**RECOMMENDED BY:**

  
Jeff Stowells  
Fire Services, Battalion Chief

**APPROVED BY:**

  
Andrew Takata  
City Manager

**REVIEWED BY:**

  
June Overholt  
Administrative Director

**RESOLUTION NO. # 2012-14**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AUTHORIZING THE EXCEPTENCE OF A MASS CARE TRAILER FROM  
RIVERSIDE COUNTY OES.**

**WHEREAS**, as Riverside County OES has purchased with grant funds Mass Care trailers for use after a disaster, and

**WHEREAS**, the county will provide a Mass Care trailer to the City of Banning via an MOU between Riverside County OES and the City of Banning, and

**WHEREAS**, the city will use, maintain, and make available through mutual aid to other cities if requested;

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Banning hereby authorizes the acceptance of the Mass Care Trailer.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of November 2012.

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

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

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

**ATTEST:**

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

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution 2012-14 was duly introduced at a regular meeting of the City Council of the City of Banning, California, held on the 13<sup>th</sup> day of November, 2012, and was duly adopted at a regular meeting of said City Council held on the 13<sup>th</sup> day of November, 2012, by the following vote, to wit:

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AYES:

NOES:

ABSTAIN:

ABSENT:

---

Marie A. Calderon, City Clerk  
City of Banning



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**COUNTY OF RIVERSIDE,  
ON BEHALF OF ITS FIRE DEPARTMENT,  
OFFICE OF EMERGENCY SERVICES**

**And the**

**CITY OF BANNING**

## Table of Contents

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### Attachments:

Attachment 1 - Office of Justice Programs Financial Guide 2005 – Part III Chapter 6

Attachment 2 - OMB Circular A87, Attachment B Selected Items of Cost, Section 15



# MEMORANDUM OF UNDERSTANDING

## BETWEEN

### COUNTY OF RIVERSIDE AND THE CITY OF BANNING

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of this 13<sup>th</sup> day of November 2012, by and between the County of Riverside, on behalf of its Fire Department, Office of Emergency Services, a political subdivision of the State of California, hereinafter referred to as "OES", representing the Riverside County Operational Area, and the City of Banning, hereinafter referred to as "City". City and OES will sometimes collectively be hereinafter referred to as the "Parties".

## RECITALS

WHEREAS, the County of Riverside, Fire Department, representing the Riverside County Operational Area, has secured Homeland Security Grant Funding from the State of California Emergency Management Agency, to purchase and outfit unincorporated county areas and each city within the county, with one hundred person mass care and shelter trailers ("Trailers"); and

WHEREAS, the acquisition of these Trailers and equipment will assist each city in their pursuit to enhance their mass care and sheltering capabilities to better protect against, respond to and recover from catastrophic emergencies; and

WHEREAS, the Parties desire to enter into this MOU to provide the terms and conditions for each city that receives a Trailer under this grant funding program;

NOW, THEREFORE, the parties hereto agree as follows:

### I. PURPOSE.

The purpose of this MOU is to: 1) document the transfer of ownership of (1) trailer(s)] from OES to the City of Banning; and 2) obligate and document the acknowledgement of the City to adhere to Office of Justice Programs Financial Guide 2005 – Part III Chapter 6 (Attachment 1) and the State OMB Circular A-87, Attachment B, Selected Items of Cost, Section 15 "Equipment and Other Capital Expenditures," (Attachment 2).

### II. BACKGROUND.

In 2008, emergency managers within the Riverside County Operational Area (OA) identified significant preparedness shortfalls with regard to their ability to properly shelter one-tenth of the overall population as suggested by federal standards. Because of this shortfall, OES has secured Homeland Security grant funding for Fiscal Year 2009 and Fiscal Year 2010 to outfit each city and portions of the county unincorporated areas with one hundred person mass care and shelter trailers. Securing such trailers will pave the way for enhanced mass care and shelter capabilities in Riverside County.

### III. TERMS AND CONDITIONS.

#### A. MOU MODIFICATION PROCESS.

After execution of this MOU, any and all requests for modifications to this MOU shall be made in writing to: Riverside County Fire Department Office of Emergency

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Services (OES) at 4080 Lemon Street, Basement Room 8, Riverside, CA 92501 Attn. Peter Lent, Deputy Director. OES reserves the right to deny, edit or accept requests for modifications. OES reserves the right to amend the terms of this MOU if required to remain in compliance with federal or state grant requirements. The City shall be notified at least thirty business days in advance of any potential revisions to the terms of this MOU.

B. TERM OF MOU.

The terms of this MOU shall remain in effect for a period of seven years from the date of the signing of this document by all involved parties. Over the course of this MOU, the City agrees to utilize the Trailer solely for its intended purpose of mass care and shelter.

C. RESPONSIBILITIES/OBLIGATIONS.

By accepting the Trailer(s), City of Banning, hereby agrees to accept and uphold the following responsibilities and obligations during the term of this MOU;

- 1) Store the Trailer in a secured area. The City will be responsible to determine the location and the type(s) of security to be used to secure the Trailer.
- 2) City shall be responsible for all costs associated with maintaining the trailer to lawfully operate and transport the trailer, including payment of the initial and annual California Department of Motor Vehicles registration fees and coverage. Insurance can be provided either by a specific insurance policy for the equipment or by a program of self-insurance.
- 3) City must utilize at least a three quarter-ton pickup truck or greater to tow the vehicle.
- 4) Replace any lost, stolen, damaged or used items with equivalent items within a reasonable timeframe not to exceed sixty (60) days from the date of loss or use. If the Trailer incurs any damage or theft during the period of this MOU, the City agrees to replace the Trailer and/or all of its contents with equivalent items and return the Trailer to the same level of supplies and conditioning as to which they were before the theft, damage or use occurred. This requirement shall apply to the Trailer and all of the components within the Trailer including all equipment and supplies.
- 5) Shall not mark, sticker, wrap or otherwise alter the appearance of the Trailer by adding their City logo or other identifying emblems, logos, or lettering. City agrees to leave the sticker identifier on the Trailer that will be on the Trailer at the time of delivery. This three inch block-style numbering shall remain in place for the duration of this MOU. City also agrees to utilize the original lock and keys, for all locks and keys on or in the Trailer, which will be provided with the Trailer at time of delivery.
- 6) Maintain all necessary components to keep the Trailer and all equipment in working order during the term of this MOU, up to and including but not limited to: tires, batteries, solar panels, regular

military cots, enhanced functional needs cots, disposable blankets, light switches, manual vent fans, rolling carts and doors.

- 7) As required by the grant, the City agrees to allow the Trailer(s) to be utilized by other jurisdictions if requested through appropriate Mutual Aid channels. The City understands and agrees that if the Trailer is requested as a Mutual Aid resource, that the requesting jurisdiction will be responsible to pick up, re-stock and return the Trailer to the City within sixty days (60) of the end of the incident for which the Trailer/resource was requested, in its original condition.
- 8) Comply with all the requirements of the Office of Justice Programs Financial Guide 2005 – Part III Chapter 6 (Attachment 1) and the State OMB Circular A-87, Attachment B, Selected Items of Cost, Section 15 “Equipment and other Capital Expenditures”(Attachment 2).

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

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

COUNTY OF RIVERSIDE

By: \_\_\_\_\_  
Peter Lent  
Deputy Director

CITY OF BANNING

Signed: \_\_\_\_\_  
Authorized Representative of the City

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# **ATTACHMENT 1**

## **OFFICE of JUSTICE PROGRAMS FINANCIAL GUIDE 2005 – PART III CHAPTER 6**

## Chapter 6: Property and Equipment

### HIGHLIGHTS OF CHAPTER:

- Acquisition of Property and Equipment
- Screening
- Loss, Damage, or Theft of Equipment
- Equipment Acquired with Crime Control Act Block/Formula Funds (BJA)
- Equipment Acquired with Juvenile Justice Act (OJJDP) Formula and Victims of Crime Act (OVC) Assistance (Formula) Funds
- Equipment and Non-Expendable Personal Property Acquired with Discretionary Funds
- Real Property Acquired with Formula Funds
- Real Property Acquired with Discretionary Funds
- Federal Equipment
- Replacement of Property (Equipment and Non-Expendable Personal Property)
- Retention of Property Records
- Supplies
- Copyrights
- Patents, Patent Rights, and Inventions

## ACQUISITION OF PROPERTY AND EQUIPMENT

Recipients/subrecipients are required to be prudent in the acquisition and management of property with Federal funds. Expenditure of funds for the acquisition of new property, when suitable property required for the successful execution of projects is already available within the recipient or subrecipient organization will be considered an unnecessary expenditure.

NOTE: Equipment purchased using funds made available under Federal grants shall be year 2000 compliant and shall be able to process all time/date data after December 31, 1999.

## SCREENING

Careful screening should take place before acquiring property in order to ensure that it is needed, with particular consideration given to whether equipment already in the possession of the recipient/subrecipient organization can meet identified needs. While there is no prescribed standard for such review, recipient/subrecipient procedures may establish levels of review dependent on factors such as the cost of the proposed equipment and the size of the recipient or subrecipient organization.

The establishment of a screening committee may facilitate the process; however, a recipient or subrecipient may utilize other management techniques which it finds effective as a basis for determining that the property is needed and that it is not already available within the recipient's organization.

The awarding agency's program monitors must ensure that the screening referenced above takes place and that the recipient/subrecipient has an effective system for property management.

Recipients/subrecipients are hereby informed that if the awarding agency is made aware that the recipient/subrecipient does not employ an adequate property management system, project costs associated with the acquisition of the property may be disallowed.

## LOSS, DAMAGE, OR THEFT OF EQUIPMENT

Recipients/subrecipients are responsible for replacing or repairing the property which is willfully or negligently lost, stolen, damaged, or destroyed. Any loss, damage, or theft of the property must be investigated and fully documented and made part of the official project records.

## EQUIPMENT ACQUIRED WITH CRIME CONTROL ACT BLOCK/FORMULA FUNDS (BJA)

Equipment acquired shall be managed to ensure that the equipment is used for criminal justice purposes. Standards and procedures governing ownership, use, management, and disposition are as follows.

1. **Title.** The Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC §3789, et seq., Section 808, requires that the title to all equipment and supplies purchased with funds made available under the Crime Control Act shall vest in the criminal justice agency or non-profit organization that purchased the property, if it provides written certification to the State

office that it will use the property for criminal justice purposes. If such written certification is not made, title to the property shall vest in the State office, which shall seek to have the equipment and supplies used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

2. **Use and Management.** A subrecipient or State shall use and manage equipment in accordance with its procedures as long as the equipment is used for criminal justice purposes.
3. **Disposition.** When equipment is no longer needed for criminal justice purposes, a State shall dispose of equipment (for both the State and subrecipients), in accordance with State procedures, with no further obligation to the awarding agency.

#### **EQUIPMENT ACQUIRED WITH JUVENILE JUSTICE ACT (OJJDP) FORMULA AND VICTIMS OF CRIME ACT (OVC) ASSISTANCE (FORMULA) FUNDS**

Equipment acquired under an award shall be managed to ensure that the equipment is used for criminal justice purposes. Standards and procedures governing ownership, use, management, and disposition are as follows.

1. **Title.** Title to equipment acquired under an award or subaward will vest upon acquisition in the recipient or subrecipient subject to the obligations and conditions set forth in 28 CFR Part 66.
2. **Use.**
  - a. A State shall use equipment acquired under an award in accordance with State laws and procedures. The awarding agency encourages the States to follow the procedures set forth in this Guide.
  - b. Other government recipients and subrecipients shall use equipment in accordance with the following requirements:
    - (1) Equipment must be used by the recipient or subrecipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.
    - (2) The recipient or subrecipient shall also make equipment available for use on other projects or programs currently or previously supported by the Federal government, providing such use does not interfere with the work on the projects or programs for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered and treated as program income to the project, if appropriate.
    - (3) Notwithstanding program income, the recipient or subrecipient shall not use equipment acquired with funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

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- (4) When acquiring replacement equipment, recipients or subrecipients may use the equipment to be replaced as a trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment, subject to the written approval of the awarding agency.

### 3. Management.

- a. A State shall manage equipment acquired under an award to the State in accordance with State laws and procedures.
- b. Other government recipient and subrecipient procedures for managing equipment (including replacement), whether acquired in whole or in part with project funds, will, at a minimum, meet the following requirements:

(1) Property records must be maintained which include:

- (a) Description of the property;
- (b) Serial number or other identification number;
- (c) Source of the property;
- (d) Identification of title holder;
- (e) Acquisition date;
- (f) Cost of the property;
- (g) Percentage of Federal participation in the cost of the property;
- (h) Location of the property;
- (i) Use and condition of the property; and
- (j) Disposition data, including the date of disposal and sale price.

- (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

- (3) A control system must exist to ensure adequate safeguards to prevent:

- (a) Loss;
- (b) Damage; or
- (c) Theft of the property.

Any loss, damage, or theft shall be investigated by the recipient and subrecipient, as appropriate.

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(4) Adequate maintenance procedures must exist to keep the property in good condition.

(5) If the recipient or subrecipient is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

#### 4. Disposition.

a. A State recipient shall dispose of its equipment acquired under an award to the State in accordance with State laws and procedures.

b. Other government recipients and subrecipients shall dispose of the equipment when original or replacement equipment acquired under the award or subaward is no longer needed for the original project or program, or for other activities currently or previously supported by a Federal agency. Disposition of the equipment will be made as follows:

(1) Items with a current per unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the awarding agency.

(2) Items with a current per unit fair market value in excess of \$5,000 may be retained or sold, and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment. Seller is also eligible for sale costs.

(3) In cases where a recipient or subrecipient fails to take appropriate disposition actions, the awarding agency may direct the recipient or subrecipient to take other disposition actions.

#### EQUIPMENT AND NON-EXPENDABLE PERSONAL PROPERTY ACQUIRED WITH DISCRETIONARY FUNDS

1. **Title.** Title to equipment acquired with Federal funds will vest upon acquisition in the recipient subject to the obligations and conditions set forth in 28 CFR Part 66 for State and local units of government, and in 28 CFR Part 70 for other recipients.

2. **Use.** A State shall use equipment acquired under an award by the State in accordance with State laws and procedures.

Local government recipients shall use equipment in accordance with the requirements contained in the section "EQUIPMENT ACQUIRED WITH JUVENILE JUSTICE ACT (OJJDP) FORMULA AND VICTIMS OF CRIME ACT (OVC) ASSISTANCE (FORMULA) FUNDS."

Other recipients shall use non-expendable personal property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipients shall use the non-expendable personal property in connection with its other Federally-sponsored activities in the following order of priority:

a. Other projects of the awarding agency needing the property.

- b. Grants of a State needing the property.
- c. Projects of other Federal agencies needing the property.

3. Management.

- a. A State shall manage its equipment acquired under an award in accordance with State laws and procedures.
- b. Local government recipients and subrecipients shall manage equipment in accordance with requirements stated in the section "EQUIPMENT ACQUIRED WITH JUVENILE JUSTICE ACT (OJJDP) FORMULA AND VICTIM OF CRIME ACT (OVC) ASSISTANCE (FORMULA) FUNDS."
- c. Other recipients' property management standards for non-expendable personal property shall include the following procedural requirements:
  - (1) Property records shall be maintained accurately and include:
    - (a) A description of the property;
    - (b) Manufacturer's serial number, model number, Federal stock number, or other identification number;
    - (c) Source of the property, including the award number;
    - (d) Whether title vests in the recipient or the Federal government;
    - (e) Acquisition date (or date received, if the property was furnished by the Federal government) and cost;
    - (f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired (not applicable to property furnished by the Federal government);
    - (g) Location, use, and condition of the property at the date the information was reported;
    - (h) Unit acquisition cost; and
    - (i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal-sponsoring agency for its share.
  - (2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

- (3) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of non-expendable property shall be investigated and fully documented. If the property was owned by the Federal government, the recipient shall promptly notify the Federal agency.
- (4) Adequate maintenance procedures shall be implemented to keep the property in good condition.
- (5) Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

#### 4. Disposition.

- a. A State shall dispose of its equipment acquired under the award by the State in accordance with State laws and procedures.
- b. Local government recipients and subrecipients shall follow the disposition requirements in the section "EQUIPMENT ACQUIRED WITH JUVENILE JUSTICE ACT (OJJDP) FORMULA AND VICTIM OF CRIME ACT (OVC) ASSISTANCE (FORMULA) FUNDS."
- c. Other recipients shall adhere to the following disposition requirements for non-expendable personal property:
  - (1) A recipient may use non-expendable personal property with a fair market value of less than \$5,000 for other activities without reimbursement to the Federal government, or may sell the property and retain the proceeds.
  - (2) A recipient may retain non-expendable personal property with a fair market value of \$5,000 or more for other uses provided that compensation is made to the awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the recipient has no need for the property and the property has further use value, the recipient shall request disposition instructions from the awarding agency. The awarding agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported to the General Services Administration by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The awarding agency shall issue instructions to the recipient no later than 120 days after the recipient's request, and the following procedures shall govern:
    - (a) If so instructed, or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the property and reimburse the awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the grant. However, the recipient shall be permitted to deduct and retain from the Federal share \$100 or

10 percent of the proceeds, whichever is greater, for the recipient's selling and handling expenses.

(b) If the recipient is instructed to ship the property to other agencies needing the property, the recipient shall be reimbursed by the benefiting Federal agency with an amount computed by applying the percentage of the recipient's participation in the cost of the project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(c) If the recipient is instructed to otherwise dispose of the property, the recipient shall be reimbursed by the awarding agency for such costs incurred in its disposition.

5. **Transfer of Title.** The awarding agency may reserve the right to transfer title to property acquired with Federal funds that have a fair market value of \$5,000 or more to the Federal government or a third party named by the awarding agency, when such a third party is otherwise eligible under existing statutes. Such transfers are subject to the following standards:
  - a. The property must be identified in the award or otherwise made known to the recipient in writing.
  - b. The awarding agency shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall follow standards set in 28 CFR Parts 66 and 70.
  - c. When title to property is transferred, the recipient shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

#### REAL PROPERTY ACQUIRED WITH FORMULA FUNDS

1. **Land Acquisition.** Block/formula funds CANNOT be used for land acquisition.
2. **Title.** Subject to the obligations and conditions set forth in the award, title to real property acquired under an award or subaward vests, upon acquisition, in the recipient or subrecipient.
3. **Use of Real Property.** The recipient and its subrecipients may use real property acquired, in whole or in part, with Federal funds for the authorized purposes of the original grant or subaward as long as needed for that purpose. The subrecipients shall maintain an inventory report which identifies real property acquired, in whole or in part, with block or formula funds. The recipient or subrecipient shall not dispose of or encumber its title or other interests.
4. **Disposition.** The subrecipient shall obtain approval for the use of the real property in other projects when the subrecipient determines that the real property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federally-sponsored projects or programs that have purposes consistent with those authorized for support by the State. When the real property is no longer needed as provided above, the

subrecipient shall request disposition instructions from the State. The State shall exercise one of the following:

- a. Direct the real property to be transferred to another subrecipient or a criminal justice activity needing the property, provided that use of such real property is consistent with those objectives authorized for support by the State.
- b. Return all real property furnished or purchased wholly with Federal funds to the control of the awarding agency. In the case of real property purchased in part with Federal funds, the subrecipient may be permitted to retain title upon compensating the awarding agency for its fair share of the property. The Federal share of the property shall be computed by applying the percentage of the Federal participation in the total cost of the project for which the property was acquired to the current fair market value of the property. In those instances where the subrecipient does not wish to purchase real property originally purchased in part with Federal funds, disposition instructions shall be obtained from the awarding agency.

#### **REAL PROPERTY ACQUIRED WITH DISCRETIONARY FUNDS**

1. **Land Acquisition.** Discretionary funds CANNOT be used for land acquisition.
2. **Title.** Subject to obligations and conditions set forth in 28 CFR Parts 66 and 70, title to real property acquired under an award vests upon acquisition with the recipient.
3. **Use of Property.** The use of property by the recipient is subject to the same principles and standards as outlined for property acquired with formula funds.
4. **Disposition.** The recipient shall follow the same principles and standards as outlined for subrecipients, except the recipient shall request disposition instructions from the Federal agency, not the State.
5. **Transfer of Title.** With regard to the transfer of title to the awarding agency or to a third party designated/approved by the awarding agency, the recipient or subrecipient shall be paid an amount calculated by applying the recipient's or subrecipient's percentage of participation in the purchase of the real property to the current fair market value of the property.

#### **FEDERAL EQUIPMENT**

In the event a recipient or subrecipient is provided Federally-owned equipment, the following requirements apply:

1. **Title** remains vested in the Federal government.
2. **Recipients or subrecipients shall manage the equipment** in accordance with the awarding agency's rules and procedures and submit an annual inventory listing.
3. **When the equipment is no longer needed**, the recipient or subrecipient shall request disposition instructions from the awarding agency.

### REPLACEMENT OF PROPERTY (EQUIPMENT AND NON-EXPENDABLE PERSONAL PROPERTY)

When an item of property is no longer efficient or serviceable but the recipient/subrecipient continues to need the property in its criminal justice system, the recipient/subrecipient may replace the property through trade-in or sale and subsequent purchase of new property, provided the following conditions are met:

1. **Similar Function.** Replacement property must serve the same function as the original property and must be of the same nature or character, although not necessarily of the same grade or quality.
2. **Credits.** Value credited for the property, if the property is traded in, must be related to its fair market value.
3. **Time.** Purchase of replacement property must take place soon enough after the sale of the property to show that the sale and the purchase are related.
4. **Compensation.** When acquiring replacement property, the recipient/subrecipient may use the property to be replaced as a trade-in or the proceeds from the sale of the property to offset the cost of the new property.
5. **Prior Approval.** State subrecipients shall obtain the written permission of the State to use the provisions of this section prior to entering into negotiation for the replacement or trade-in of property.

### RETENTION OF PROPERTY RECORDS

Records for equipment, non-expendable personal property, and real property shall be retained for a period of three years from the date of the disposition or replacement or transfer at the discretion of the awarding agency. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

### SUPPLIES

1. **Title.** Title to supplies acquired under an award or subaward vests, upon acquisition, in the recipient or subrecipient, respectively.
2. **Disposition.** If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the funding support and the supplies are not needed for any other Federally-sponsored programs or projects, the recipient or subrecipient shall compensate the awarding agency for its share. The amount of compensation shall be computed in the same manner as for non-expendable personal property or equipment.

## **COPYRIGHTS**

The awarding agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes:

1. The copyright in any work developed under an award or subaward; and
2. Any rights of copyright to which a recipient or subrecipient purchases ownership with support.

## **PATENTS, PATENT RIGHTS, AND INVENTIONS**

If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal award or subaward funds, such facts must be promptly and fully reported to the awarding agency. Unless there is a prior agreement between the recipient and the awarding agency on disposition of such items, the awarding agency shall determine whether protection on the invention or discovery shall be sought. The awarding agency will also determine how rights in the invention or discovery (including rights under any patents issued thereon) shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, dated August 23, 1971, and statement of Government Patent Policy, as printed in 36 FR 16839). Government-wide regulations have been issued at 37 CFR Part 401 by the Department of Commerce.

# **ATTACHMENT 2**

## **OMB A87 ATTACHMENT B SELECTED ITEMS OF COST SECTION 15**

### **“EQUIPMENT & OTHER CAPITAL EXPENDITURES”**

Only the pertinent portions of this document have been included as an attachment to  
this MOU



b. Donated services received:

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the Federal Grants Management Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

13. Employee morale, health, and welfare costs.

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the governmental unit's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the governmental unit. Income generated from any of these activities will be offset against expenses.

14. Entertainment. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. Equipment and other capital expenditures.

a. For purposes of this subsection 15, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the governmental

unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to Attachment B, section 15.b (1), (2), and (3) above, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the awarding agency. In addition, Federal awarding agencies are authorized at their option to waive or delegate the prior approval requirement.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section 11, Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section 37, Rental costs, concerning the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

(7) When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use

## CITY COUNCIL AGENDA

**Date:** November 13, 2012

**TO:** City Council

**FROM:** Kahono Oei, City Engineer

**SUBJECT:** Resolution No. 2012-84, "Approving the Projects for Fiscal Year 2013-2014 Community Development Block Grant (CDBG) Program"

**RECOMMENDATION:** Resolution No. 2012-84, "Approving the Projects for Fiscal Year 2013-2014 Community Development Block Grant (CDBG) Program," and authorize staff to submit said applications to the Riverside County Economic Development Agency.

**JUSTIFICATION:** The approval of this resolution is essential in order to utilize federal grant funds available through the Community Development Block Grant (CDBG) Fiscal Year 2013-2014 program.

**BACKGROUND:** The City of Banning, through the Riverside County Economic Development Agency, has been submitting various projects annually for funding under the CDBG program.

Requests for applications were mailed by the Publics Works Department on September 24, 2012 to City Departments and non-profit organizations that serve the community within the City of Banning. Additionally a press release was published in the Record Gazette on October 5, 2012 notifying the public of application availability as shown in Exhibit "A".

As part of the CDBG guidelines, the proposed projects/activities must meet the following criteria:

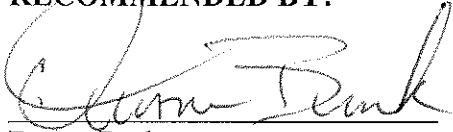
1. The project or activity must primarily benefit the low and moderate-income community.
2. The project or activity must aid in the prevention or elimination of slums and blight areas.
3. The project or activity must be designed to meet the Community's development needs and have a particular urgency.

On October 23, 2012 at its regular meeting, the City Council appointed a committee to review the applications. On October 29, 2012 the applications were given to the committee and the recommendations are as shown as Exhibit "B". All project applications are available at the City Clerk's office for public review.

As set forth in the guidelines for utilization of the Community Development Block Grant funding, the City Council may allocate up to 15% of the total allocation to service oriented non-profit agencies.

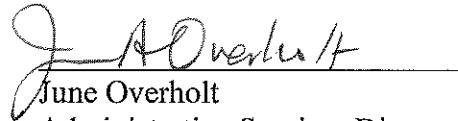
**FISCAL DATA:** The estimated funding under the CDBG Fiscal Year 2013-2014 program is approximately \$140,000.00. Upon approval of the City Council, the projects will be submitted to the Riverside County Economic Development Agency and it is anticipated that final funding approval will be conveyed to the City by August of 2013.

**RECOMMENDED BY:**



Duane Burk  
Director of Public Works

**REVIEWED BY:**



June Overholt  
Administrative Services Director/  
Assistant City Manager

**APPROVED BY:**



Andy Takata  
City Manager

**RESOLUTION NO. 2012-84**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE PROJECTS FOR THE FISCAL YEAR 2013-2014 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

**WHEREAS,** the City of Banning has been submitting applications for projects/activities under the Community Development Block Grant (CDBG) program to the Riverside County Economic Development Agency annually; and

**WHEREAS,** on September 24, 2012, the City of Banning mailed out requests for applications to the eligible organizations that serve the Community within the City of Banning and a press release was published in the Record Gazette on October 5, 2012 as shown in Exhibit "A"; and

**WHEREAS,** on October 27, 2012 at its regular meeting, the City Council appointed a committee to review the applications and on October 29, 2012 the applications were given to the committee and the recommendations as shown as Exhibit "B" and;

**WHEREAS,** the projects/activities submitted herein meet the CDBG program guidelines and/or requirements; and

**WHEREAS,** it is essential that the projects/activities be approved by the City Council through resolution in order for the City and its citizens to utilize the federally funded CDBG grant funds.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

Section 1. Resolution No. 2012-84, approving the project/activities submitted for funding under the Community Development Block Grant programs for Fiscal Year 2013-2014 as listed in Exhibit "B" is hereby adopted.

Section 2. Staff is authorized to submit Fiscal Year 2013-2014 Community Development Block Grant program applications to Riverside Economic Development Agency for approval by their Board.

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day of November, 2012.

---

Don Robinson, Mayor  
City of Banning

**ATTEST:**

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

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

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-84, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of November, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

**EXHIBIT "A"**

**OCTOBER 5, 2012 PRESS RELEASE NOTIFYING THE PUBLIC  
OF APPLICATION AVAILABILITY**

## COMMUNITY BRIEFS

### Applications available for Block Grants

The city of Banning is accepting applications for fiscal year 2013-14 for the Community Development Block Grant program.

Eligible public services include but are not limited to: child care, health care, job training, services for the homeless, recreation programs, services for seniors and public safety services.

Applications are due by 3 p.m. Oct. 23. For information, call the city's Engineering Division at (951) 922-3130.



## **EXHIBIT “B”**

### **REQUESTED PROJECT AND SERVICE PROGRAMS**



**Requested Projects for FY 2013-2014  
Community Development Block Grant (CDBG) Program**

**SERVICE RELATED PROJECTS**

<b>NO.</b>	<b>AGENCY</b>	<b>DESCRIPTION</b>	<b>FY 2012-13 REQUESTED</b>	<b>AD-HOC RECOMMENDATION</b>
<b>1.</b>	<b>Boys and Girls Club</b>	<b>Teen – Town (Youth Development Services)</b>	<b>\$30,000.00</b>	<b>\$10,500.00</b>
<b>2.</b>	<b>San Gorgonio Child Care Consortium</b>	<b>Special Needs</b>	<b>\$10,000.00</b>	<b>\$10,500.00</b>
<b>3.</b>	<b>Habitat for Humanity of the San Gorgonio Pass</b>	<b>House Rehabilitation</b>	<b>\$24,010.00</b>	<b>0</b>
	<b>Total</b>		<b>\$64,010.00</b>	<b>\$21,000.00</b>

**Requested Project for FY 2013-2014  
Community Development Block Grant (CDBG) Program**

**CITY PROJECTS**

<b>NO.</b>	<b>PROJECT NAME</b>	<b>DESCRIPTION</b>	<b>FY 2012-13 REQUESTED</b>	<b>AD-HOC RECOMMENDATION</b>
<b>1.</b>	<b>Replier Park Bowl Rehabilitation</b>	<b>Construction Services to include design façade, stage repair, additional restrooms, improvements to the superstructure, walkways, etc.</b>	<b>\$300,000.00</b>	<b>\$119,000.00</b>
	<b>Total</b>		<b>\$300,000.00</b>	<b>\$119,000.00</b>

## **CITY COUNCIL AGENDA**

**DATE:** November 13, 2012

**TO:** Mayor and City Council

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

**SUBJECT:** Amendment to CalPERS Contract – Two Tier Plans for Miscellaneous and Safety Employees

**RECOMMENDATION:** Consider the following actions in order to provide the CalPERS Two-Tier miscellaneous and safety formulas for new employees..

- a. Adopt Resolution No. 2012-85, a Resolution of Intention to approve an Amendment to the Contract between the Board of Administration of the California Public Employees' Retirement System (CalPERS) and the City Council for the City of Banning in order to implement the lower-level retirement formula of 2%@60 for miscellaneous employees and 2%@50 for safety employees for new employees and to have the new employees subject to the final compensation calculation based on an average 36 month period.
- b. Authorize the Mayor to execute the Certification of Compliance with Governments Code Section 20903 for local miscellaneous and local safety members.

**JUSTIFICATION:** As part of the City's efforts to reduce expenditures in order to address the ongoing structural budget deficit and operational concerns, staff met and conferred with the employee unions and associations to negotiate a lower level retirement formula for new employees, to have the employees pay the employee paid member contribution (EPMC) of 7% for miscellaneous members and 9% for safety members, and to have the new employees subject to the final compensation calculation based on an average 36 month period.

**BACKGROUND:** During negotiations with the employee bargaining groups, the City proposed implementation of a two-tier retirement system for new members. The bargaining units have tentatively agreed to changes in formula. A side letter agreement with the groups will formalize this understanding.


Although the State legislature recently approved AB340, Pension Reform, the need for the proposed two-tier formulas still exists. AB340 clearly imposes a two-tiered formula effective January 1<sup>st</sup>, 2013 on new employees that have NEVER been vested in CalPERS. Adoption of the attached resolution addresses all future new employees that ARE vested in CalPERS. In the absence of this resolution and amendment, any new employee that is already vested in CalPERS will automatically be placed in the current, higher formula. The window to make this contract amendment ends December 31<sup>st</sup>, 2012 per AB340.

In order to implement the second tier of the miscellaneous and safety retirement system, the City is required to amend its contract with CalPERS. Pursuant to the amendment, any new miscellaneous employees hired after the effective date of this amendment will be subject to a 2%@60 retirement formula and safety employees will be subject to a 2%@50 retirement formula with final compensation retirement based on an average 36 month period. New employees will pay the full employee paid member contribution (EPMC) of 7% for miscellaneous (non-safety members) and 9% for safety employees. This will result in reducing future costs for the City. (Note: The new employee rate for miscellaneous members corresponds to a reduced employee share of the lower retirement formula.)

As part of the process of adopting this resolution, the City submitted a request to CalPERS to provide the Resolution of Intention, Ordinance, Amendment to Contract-Exhibit, and Certifications of Compliance. Due to the timing of the request and the backlog at CalPERS, these documents will be provided after this agenda is published. A draft resolution has been included with the staff report for preliminary review. As soon as the documents are received from CalPERS, they will be made available by the City Clerk as soon as available. After adoption of the Resolution of Intention, an Urgency Ordinance will be presented to Council at the December 11<sup>th</sup> meeting. Once adopted, the new formulas will take effect December 24<sup>th</sup>, 2012.

**FISCAL DATA:** The immediate fiscal impact is unknown due to the fact that the 2@60 for miscellaneous and 2%@50 for safety benefit will only be given to new employees already vested in CalPERS. Savings will come in the future through lower rates as more and more of the work force is on the lower plan. Staff recognizes through discussions with the bargaining groups that there may be challenges with recruitments in the interim due to the lower benefit.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

**Attachments:**

1. Resolution No. 2012-85 – Resolution of Intention
2. Certifications of Compliance (forthcoming from CalPERS)
3. Exhibit - Amendment to Contract (forthcoming from CalPERS)

## RESOLUTION NO. 2012-85

### **A RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY COUNCIL OF THE CITY OF BANNING**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency a resolution giving notice of its intention to approve an amendment to the contract, said resolution shall contain a summary of the proposed changes; and

WHEREAS, the following is a statement of the proposed changes:

To provide Section 20475 (Different Level of Benefits). Section 21353 (2% at 60 full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification and to have the new employees subject to the final compensation calculation based on an average 36 month period after the effective date of this amendment to contract, and

Section 20475 (Different Level of Benefits). Section 21362 (2% at 50 full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local safety members entering membership for the first time in the safety classification and to have the new employees subject to the final compensation calculation based on an average 36 month period after the effective date of this amendment to contract.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the City Council of the City of Banning, California, as follows:

1. That the above recitations are true and correct.
2. That the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

PASSED, APPROVED AND ADOPTED this 13th day of November, 2012 at Banning, California.

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

APPROVED AS TO FORM

---

David Aleshire, Attorney  
Aleshire & Wynder, LLP

ATTEST:

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Marie A. Calderon  
City Clerk of the City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2012-85 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of November, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

## CITY COUNCIL AGENDA

**DATE:** November 13, 2012

**TO:** City Council

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

**SUBJECT:** Resolution No. 2012-86, "Approving the Reimbursement Agreement between the City of Banning and MCI Communications Services, Inc., for Relocation of Facilities at a Portion of the Union Pacific Railroad Right of Way for Project No. 2006-05, 'Sunset Avenue Grade Separation'"

### **RECOMMENDATION:**

- I. Adopt Resolution No. 2012-86, "Approving the Reimbursement Agreement between the City of Banning and MCI Communications Services, Inc., for Relocation of Facilities at a Portion of the Union Pacific Railroad Right of Way for Project No. 2006-05, 'Sunset Avenue Grade Separation'" for an amount "Not to Exceed" \$237,731.59.
- II. Authorize the City Manager to execute the Reimbursement Agreement with MCI Communications Services, Inc., attached herein as Exhibit "I".

**JUSTIFICATION:** In order to move forward with the Sunset Avenue Grade Separation Project, it is necessary for MCI Communications Services to provide relocation of facilities at a portion of the Union Pacific Railroad Right of Way.

**BACKGROUND:** The City has initiated the design of the Sunset Avenue grade separation to pass underneath the existing Union Pacific Railroad (UPRR) tracks. In doing so, it will provide the City with a third access route between the north and south sides of the City which will enhance access for emergency vehicles and residents. Completion of the project will also improve reliability, throughput, and trade access around an area of rapid commercial and residential development.

On March 23, 2010, City Council adopted Resolution No. 2010-18, "Approving the Cooperative Agreement with Riverside County for Sunset Avenue Grade Separation Improvements". This Agreement formally designated the County as the lead agency permitting the County to provide administrative, technical, managerial and support services necessary to develop and implement the approval of said project through the State of California, Department of Transportation (Caltrans).

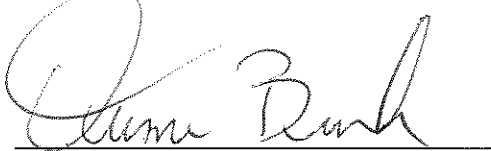
In order to complete the underpass project, it is necessary to relocate the existing utilities/facilities currently located on the street within the Right-of-Way. One of the utilities is MCI Communication Services, Inc., and their facilities need to be relocated so that the roadway can be lowered below Highway I-10 and Union Pacific Railroad tracks.



As a result it is necessary to approve the Reimbursement Agreement with MCI Communications Services, Inc.

**FISCAL DATA:** The estimated cost of the relocation is \$237,731.59, and the funds are available in the remaining TUMF Fund administered by WRCOG. Staff will submit the request through WRCOG to fund the relocation of the MCI facilities.

**RECOMMENDED BY:**



Duane Burk,  
Director of Public Works

**REVIEWED BY:**



June Overholt,  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**



Andy Takata,  
City Manager

**RESOLUTION NO. 2012-86**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF BANNING AND MCI COMMUNICATIONS SERVICES, INC., FOR RELOCATION OF FACILITIES AT A PORTION OF THE UNION PACIFIC RAILROAD RIGHT OF WAY FOR PROJECT NO. 2006-05, "SUNSET AVENUE GRADE SEPARATION"**

**WHEREAS**, the City has initiated the design of the Sunset Avenue grade separation to pass underneath the existing Union Pacific Railroad (UPRR) tracks which will provide the City with a third access route between the north and south sides of the City which will enhance access for emergency vehicles and residents; and

**WHEREAS**, on March 23, 2010, City Council approved Resolution No. 2010-18, "Approving the Cooperative Agreement with Riverside County for Sunset Avenue Grade Separation Improvements" formally designating the County as the lead agency permitting the County to provide administrative, technical, managerial and support services necessary to develop and implement the approval of said project through the State of California, Department of Transportation (Caltrans); and

**WHEREAS**, it is necessary to approve the Reimbursement Agreement with MCI Communications Services, Inc., in order to relocate the facilities located along the street within the UPRR Right-of-Way, and lower the roadway below the highway I-10 and UPRR tracks; and

**WHEREAS**, the estimated cost of the relocation is \$237,731.59, and the funds to pay for the relocation is available in the remaining TUMF funds administered by WRCOG.

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

Section 1. Approve the Reimbursement Agreement with MCI Communications Services, Inc., as attached herein as Exhibit "T", for the relocation of its facilities located on the streets within the Union Pacific Railroad Right-of-Way, and lower the roadway below Highway I-10, for the Sunset Grade Separation Project.

Section 2. Authorization is hereby granted for the City Manager to execute said Agreement. Said authorization shall be rescinded if the parties do not execute the Agreement within one hundred twenty (120) days of the date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 13th day of November, 2012.

---

Don Robinson, Mayor  
City of Banning

**ATTEST**

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

**APPROVED AS TO FORM  
AND LEGAL CONTENT**

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

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-86 was adopted by the City Council of the City of Banning at the Regular Meeting thereof held on the 13th day of November, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**EXHIBIT "I"**

**MCI COMMUNICATIONS SERVICES, INC.  
REIMBURSEMENT AGREEMENT**

## REIMBURSEMENT AGREEMENT

This reimbursement agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between MCI communications services, Inc., a Delaware corporation ("MCI"), having an address at 2400 North Glenville Drive, Richardson, Texas 75082, and, [city of Banning] a municipal corporation, [determine the type of legal entity: corporation, municipal corporation, joint venture, partnership, etc.] ("Reimbursor"), having an address at [99 E. Ramsey Street, Banning, CA 92220]. The signatories to this agreement shall be referred to individually as a "Party" and collectively as the "Parties".

### WITNESSETH:

WHEREAS, reimbursor is constructing, reconstructing, crossing,, or otherwise changing a portion of the [union pacific railroad] right -of-way at [sunset grade separation] which requires that protection or relocation of MCI facilities along, over and/or under said easement or right-of-way;

WHEREAS, as a result of reimbursor's construction activity, reimbursor has requested MCI to (engineer a plan) to relocate or protect a portion of its facilities without cost or risk to MCI; and

WHEREAS, MCI, under the terms hereinafter stated, is willing to undertake such relocation or protection of its facilities (the "Project") solely in order to accommodate reimbursor, provided reimbursor reimburses MCI for all of its costs, direct and indirect, associated with the Project.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and covenants herein contained, the Parties agree as follows:

1. Reimbursor agrees that Exhibit a, attached hereto and made a part of hereof, represents the scope of work for the Project.
2. Reimbursor may, at its own expense, inspect construction MCI performs in connection with the Project.
3. Reimbursor agrees to bear both direct and indirect costs incurred by MCI and relating to any construction MCI performs in connection with the Project.
4. The total cost of the Project is estimated to be Two-Hundred Thirty-Seven Thousand, Seven-Hundred Thirty-One Dollars and Fifty-Nine Cents (\$237,731.59), as detailed in Exhibit B, attached hereto and made a part hereof. Reimbursor acknowledges and agrees that this amount is an estimate and shall not be construed as limiting the amount MCI is to be reimbursed by reimbursor under this agreement. MCI shall provide notice to reimbursor when MCI becomes aware that actual costs

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will exceed the estimate by more than ten percent (10%). MCI may, in its sole discretion, submit to reimbursor and itemized invoice for actual Project costs not more often than monthly. Reimbursor shall pay the full amount billed within thirty (30) days following receipt of the invoice from MCI.

5. Following completion of the Project, MCI shall make an accounting of final, unpaid, actual costs of the Project and provide reimbursor with a copy of the accounting and itemized invoice therefor. Reimbursor shall pay the full amount billed within thirty (30) days after receipt of the invoice from MCI.
6. Reimbursor shall perform no work within ten feet (10') on either side of the existing MCI facilities located within the right-of-way until the Project has been completed.
7. The obligations of MCI are subject to force majeure and MCI shall not be in default of this agreement if any failure or delay in performance is caused by strike or other labor problems; accidents; acts of God; fire; flood; adverse weather conditions; material or facility shortages or unavailability; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules regulations or restrictions, including, without limitation, the necessity of obtaining permits or environmental assessments or environmental approvals; condemnation or the exercise of rights of eminent domain; war, civil disorder or acts of terrorism; or any other cause beyond the reasonable control of MCI.
8. Reimbursor shall give written notice to MCI at least forty-eight (48) hours, excluding Saturday, Sunday and legal holidays, in advance of commencement of any work in the immediate permitted area, subject to the limitations set forth in Paragraph 6. The notice shall be given to those individuals listed on the contact sheet of Exhibit A. In the event of an emergency, reimbursor shall provide telephonic notice to MCI at 1-949-622-3575 upon reimbursor's discovery of the emergency.
9. This agreement supersedes every antecedent or concurrent oral and/or written declaration and/or understanding by and between MCI and reimbursor pertaining to the Project.
10. The terms of this agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
11. Each Party warrants that it has the full right and authority to enter into this agreement. All necessary approvals and authority to enter into this agreement have been obtained and the person executing this agreement on behalf of each Party has the express authority to do so and, in so doing, to bind such Party hereto.

IN WITNES WHEREOF, the Parties have executed this agreement as of the day and year first above written.

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CITY OF BANNING

MCI COMMUNICATIONS SERVICES, INC.

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

Name: Andy Takata,

Title: City Manager

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

Name: Marty Hersh,

Title: Group Manager OSP Construction

Tax ID #95-6000674

Telephone: 951-922-3100

Email Address: atakata@ci.banning.ca.us

Billing Contact:

Name: Duane Burk, Director of Public Works

Address: P.O. Box 998

Banning, CA 92220

## Exhibit A

### BACKGROUND

MCI/Verizon Business will be required to relocate its MCI Long Distance Fiber Cable to accommodate the City of Banning's Grade Separation Project at Sunset Road and the Union Pacific Railroad Tracks.

### SCOPE OF WORK

MCI/Verizon Business will be required to relocate approximately 2315' of existing MCI Long Distance Fiber Cable to accommodate a City of Banning Grade Separation Project at Sunset Avenue and the Union Pacific Railroad Right-of-way.

MCI OSP relocation activities will consist of the following work order operations: 1) Trench and place 815 feet of 1-2 HPDE conduit. 2) Directional bore and place 1,500 feet of 1-2, conduit. 3) Remove 2,315 feet of abandoned fiber optic cable to clear existing duct to facilitate placement of micro duct and cable. 4) Place 2,315 feet of 1-16mm micro duct inside the 2 HDPE conduit. 4) Place 2,315 feet of 24 count fiber optic. 5) Perform splicing operations on the new fiber cable. 6) Remove 2,315 feet of existing fiber optic cable after splicing operations have completed.

### CONTACTS

#### MCI:

Craig T. Robinson- Manager  
17642 Armstrong  
Irvine, CA. 92614  
949-622-3575 office  
714-863-2709 cell  
[Craig.robinson@verizon.com](mailto:Craig.robinson@verizon.com)

Dan Garden - Proj. Engineer  
157 South Lilac Avenue  
Rialto, CA. 92376  
909-421-3316 office  
951-536-1200 cell  
[dan.garden@verizon.com](mailto:dan.garden@verizon.com)

#### CITY OF BANNING:

Kahono Oei  
99 E. Ramsey Street  
Banning, CA. 92220  
951-922-3130 office  
[koel@ci.banning.ca.us](mailto:koel@ci.banning.ca.us)

#### COUNTY OF RIVERSIDE:

Stan Dery  
3525 14<sup>th</sup> Street  
Riverside, CA. 92501  
951-955-6785 office  
[SDERY@rcctima.org](mailto:SDERY@rcctima.org)

#### Kimley-Horn and Associates:

Nick Roberts - Project Engineer  
401 B Street, Suite 600  
San Diego, CA. 92101  
619-744-0118 office  
[Nick.roberts@kimley-horn.com](mailto:Nick.roberts@kimley-horn.com)

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# Exhibit B

Page: 01



## OUTSIDE PLANT CONSTRUCTION

### COST ESTIMATE (ACTIVE APPROVED )

10/25/2012

Project #:	R40024-046	Revision:	2	Date Prepared:	10/17/2012
Title	BANNING, CA RCUP SUNSET GRADE SEP. UPRR MP 566.22			Engineer:	DANIEL GARDEN
Site Code:	RVSFCA			Manager:	CRAIG ROBINSON
Investigation#:	3872-2011			City:	BANNING
Disposition:	REFUNDABLE CUP			State:	CA
				Footage Impact:	3,316

#### DESCRIPTION OF WORK

MCI/Verizon will be required to relocate approximately 2315' of existing MCI Long Distance Fiber Cable to accommodate a City of Banning Grade Separation Project at Sunset Avenue and the Union Pacific Railroad Right-of-way.

MCI OSP relocation activities will consist of the following work order operations: 1) Trench and place 815 feet of 1-2" HPDE conduit. 2) Directional bore and place 1,500 feet of 1-2" conduit. 3) Remove 2,315 feet of abandoned fiber optic cable to clear existing duct to facilitate placement of micro duct and cable. 4) Place 2,315 feet of 1-1/2" 6mm micro duct inside the 2" HPDE conduit. 5) Place 2,315 feet of 24 count fiber optic. 6) Perform splicing operations on the new fiber cable. 7) Remove 2,315 feet of existing fiber optic cable after splicing operations have completed.

#### SCHEDULE

Eng. Start:	07/09/2012	Const. Start:	12/07/2012
Eng. Complete:	09/28/2012	Const. Complete:	03/29/2013

#### SUMMARY OF ESTIMATED COSTS

A):	ENGINEERING:	\$12,140.00
B):	INSPECTION SERVICES:	\$15,100.00
C):	FURNISHED MATERIALS:	\$1,755.59
D):	CONTRACTOR UNIT PRICE SCHEDULE:	\$200,000.00
E):	SPlicing LABOR:	\$8,738.00
F):	TOTAL:	\$237,731.59

Construction Manager: \_\_\_\_\_

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

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# Exhibit B

Page: 02



## OUTSIDE PLANT CONSTRUCTION

### COST ESTIMATE (ACTIVE APPROVED )

10/26/2012

#### A) ENGINEERING

INTERNAL - REF DESCRIPTION:	QTY:	U/M:	UNIT \$:	EXT. \$:
OSP Engineers	5	hrs	\$728.00	\$3,640.00
CONTRACT - REF DESCRIPTION:	QTY:	U/M:	UNIT \$:	EXT. \$:
Project Engineer (external)	16	day	\$631.25	\$8,500.00
ENGINEERING Sub TOTAL:				\$12,140.00

#### B) INSPECTION SERVICES

INTERNAL - REF DESCRIPTION:	QTY:	U/M:	UNIT \$:	EXT. \$:
EXTERNAL - REF DESCRIPTION:	QTY:	U/M:	UNIT \$:	EXT. \$:
Craft Inspector	15	day	\$340.00	\$5,100.00
RR Flagman	10	day(s)	\$1,000.00	\$10,000.00
INSPECTION SERVICES Sub TOTAL:				\$15,100.00

#### C) FURNISHED MATERIALS

REF DESCRIPTION:	QTY:	U/M:	UNIT \$:	EXT. \$:
24 Fiber Non Armored Cable Riser Rated	2315	ft.	\$0.21	\$486.15
Splice Materials Per Splice Location (216 or Larger)	2	ea.	\$634.72	\$1,269.44
FURNISHED MATERIALS Sub TOTAL:				\$1,755.59

#### D) CONTRACTOR UNIT PRICE SCHEDULE

REF DESCRIPTION:	QTY:	U/M:	UNIT \$:	EXT. \$:
Place Conduit	815	lf	\$32.00	\$26,080.00
Place handhole	2	ea.	\$800.00	\$1,600.00
Remove handole	2	ea.	\$465.00	\$930.00
Place Cable	2315	lf	\$2.00	\$4,630.00
Place Micro Duct	2315	lf	\$2.00	\$4,630.00
Remove Cable	2315	lf	\$1.00	\$2,315.00
Remove Micro Cable and Duct	2315	lf	\$1.00	\$2,315.00
Directional bore	1500	lf	\$105.00	\$157,500.00

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# Exhibit B

Page: 03



## OUTSIDE PLANT CONSTRUCTION

### COST ESTIMATE (ACTIVE APPROVED )

10/25/2012

CONTRACTOR UNIT PRICE SCHEDULE Sub TOTAL: \$200,000.00

#### E) SPLICING LABOR

REF DESCRIPTION:	QTY:	U/M:	UNIT \$:	EXT. \$:
OPS Splicing	12	hrs	\$728.00	\$8,736.00
SPLICING LABOR Sub TOTAL:				\$8,736.00

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**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** November 13, 2012

**TO:** City Council

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

**SUBJECT:** Resolution No. 2012-87, "Approving a Contract Services Agreement with TruGreen Landcare for Landscape Maintenance Services"

**RECOMMENDATION:** Adopt Resolution No. 2012-87:

- I. Approving a Contract Services Agreement with TruGreen Landcare for Landscape Maintenance Services for an amount not to exceed \$12,530.00.
- II. Authorizing the Administrative Services Director to appropriate \$10,430.00 from the General Fund to Account No. 100-4900-431.30-15 and to make all necessary budget adjustments, appropriations and transfers related to the approval of the Contract Services Agreement.
- III. Authorizing the City Manager to execute the contract services agreement.

**JUSTIFICATION:** It is necessary to award a contract to TruGreen Landcare in order to provide landscape maintenance for the medians on Ramsey Street from Highland Springs Avenue to Highland Home Road and the landscaped areas around the Police Department Building located at 125 E. Ramsey Street.

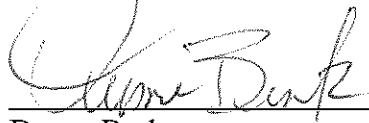
**BACKGROUND:** Due to staff cut backs the Street Department is no longer able to maintain the landscaping in the medians on Ramsey Street from Highland Springs Avenue to Highland Home Road and the Landscaped areas around the Police Department Building.

TruGreen Landcare is a reputable organization and has extensive experience. Additionally, TruGreen Landcare holds the current annual contract for the City of Banning's Monthly Landscape Maintenance of the City Hall and has effectively provided services and performed the Scope of Work satisfactorily. The scope of services include, shrub bed maintenance, tree care and pruning, fertilization, weed and pest control, irrigation equipment maintenance and operations.

**FISCAL DATA:** The proposed agreement will be for the time period between December 1, 2012 and June 30, 2013 (7 months). The cost for maintaining the medians on Ramsey Street from Highland Home Road will be \$10,430.00 (\$1,490.00 per month). An appropriation is requested in the amount of \$10,430.00 from the General Fund to Account No. 100-4900-431.30-15. The cost for maintaining the landscaping around the Police Department Building will be \$2,100.00 (\$300.00 per

month) and will be funded using Account No. 001-2200-421.23-29, which currently has a balance of \$3,000.00.

**RECOMMENDED BY:**




Duane Burk,  
Director of Public Works

**RECOMMENDED BY:**

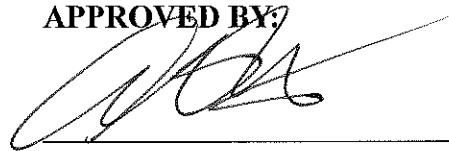
\_\_\_\_\_  
Leonard Purvis,  
Police Chief

**REVIEWED BY:**



June Overholt,  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**



Andy Takata,  
City Manager

**RESOLUTION NO. 2012-87**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,  
APPROVING A CONTRACT SERVICES AGREEMENT WITH TRUGREEN LANDCARE  
FOR LANDSCAPE MAINTENANCE SERVICES**

**WHEREAS**, due to staff cut backs the Street Department is no longer able to maintain the landscaping in the medians on Ramsey Street from Highland Springs Avenue to Highland Home Road and the landscaped areas around the Police Department Building located at 125 E. Ramsey Street; and

**WHEREAS**, TruGreen Landcare is a reputable organization and has extensive experience; additionally, TruGreen Landcare holds the current annual contract for the City of Banning's Monthly Landscape Maintenance of the City Hall and has effectively provided services and performed the Scope of Work satisfactorily; the scope of services include, shrub bed maintenance, tree care and pruning, fertilization, weed and pest control, irrigation equipment maintenance and operations; and

**WHEREAS**, the proposed contract is for seven (7) months, from December 1, 2012 to June 30, 2013; and

**WHEREAS**, the cost for maintaining the medians on Ramsey Street from Highland Home Road will be \$10,430.00 (\$1,490.00 per month) and the cost for maintaining the landscaping around the Police Department Building will be \$2,100.00 (\$300.00 per month).

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

SECTION 1. The City Council adopts Resolution No. 2012-87 approving a Contract Services Agreement with TruGreen Landcare for Landscape Maintenance Services for an amount not to exceed \$12,530.00.

SECTION 2. The Administrative Services Director is hereby authorized to appropriate \$10,430.00 from the General Fund to Account No. 100-4900-431.30-15 and to make the necessary budget adjustments, appropriations and transfers related to the Contract Services Agreement.

SECTION 3. The City Manager is hereby authorized to execute the Agreement with TruGreen Landcare for Landscape Maintenance Services. This authorization will be rescinded if the contract agreement is not executed by both parties within forty-five (45) days of the date of this Resolution.

**PASSED, APPROVED, AND ADOPTED** this 13th day of November, 2012.

---

Don Robinson, Mayor  
City of Banning

**ATTEST:**

---

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

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

---

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-87 was adopted by the City Council of the City of Banning at the regular meeting thereof held on the 13<sup>rd</sup> day of November, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

## CITY COUNCIL AGENDA

**DATE:** November 13, 2012  
**T0:** City Council  
**FROM:** Phil Holder, Lieutenant  
**SUBJECT:** City Business Permit for Valley Medical Transport, LLC.

**RECOMMENDATION:** "The City Council review and consider approving a City Business Permit for Valley Medical Transport, LLC. to provide non-emergency medical transport services within the City Limits of Banning."

**BACKGROUND / ANALYSIS:**

Mr. Jose Padilla is the President/CEO for Valley Medical Transport, LLC., which is a private Basic Life Support (BLS) ambulance service that intends to provide non-emergency medical transportation for both critical and non-critical patients in the City of Banning and County of Riverside.

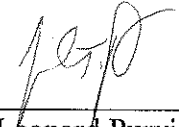
Valley Medical Transport, LLC holds a valid and current Riverside County Community Health Agency, Department of Public Health permit, which authorizes them to operate within the boundaries of Riverside County. The company has a fleet of vehicles that are painted and distinguished as ambulances, which are registered with the California Department of Motor Vehicles, as required by law, and have passed inspection with the California Highway Patrol.

Valley Medical Transport, LLC. will not be providing emergency response services as American Medical Response (AMR) is under contract with Riverside County to provide such services.


Presently there are four ambulance companies that provide the same service in the City of Banning.

**FISCAL IMPACT:** None

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Leonard Purvis  
Chief of Police

**APPROVED BY:**

  
\_\_\_\_\_  
Andrew Takata  
City Manager

///



**CITY OF BANNING  
REPORT OF OFFICERS**

**DATE:** November 13, 2012

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

**FROM:** Bill R. Manis, Economic Development Director/Public Information Officer

**SUBJECT:** Approval of Exclusive Negotiations Agreement by and Between the City of Banning and the Fairview Holdings, S.A., LLC

**RECOMMENDATION:**

That the City Council:

- (1) That the City Council approve the Exclusive Negotiation Agreement ("ENA") to be in substantially the form shown in the Agenda Package and authorize the City Manager, and the City Attorney to finalize the ENA to the final executable form; and
- (2) Direct staff to continue discussions with the representatives of Fairview Holdings, S.A., LLC and work towards, in good faith, the culmination of a development agreement or equivalent agreement(s), that may provide for future development of the area in and around the Banning Municipal Airport only after said agreements have been considered and approved by the City Council after a public hearing in accordance with the law.

**BACKGROUND:**

The City owns three (3) parcels of land located immediately east of Hathaway Street and along Barbour Avenue in Banning. The three (3) parcels consist of the Banning Municipal Airport (127.15 acres) which is improved, and two (2) adjacent parcels (39 acres and 20 acres respectively) which are partially improved. The Airport property has a General Plan designation of "Public Facilities" and a Zoning designation of "PF-A." The adjacent parcels have a General Plan and Zoning designation of "Industrial." The Airport property includes 5,200 feet of runway, one (1) terminal building, one (1) facility capable of housing a fixed base operator, six (6) T-hangers, three (3) conventional hangers, and fueling facilities.

The area in and around the Banning Municipal Airport is currently not being used to its highest and best use. As a result, in February 2012, City staff prepared and distributed a Request for Proposal ("RFP") to invite proposals from qualified firms or individuals to develop the 186 acres of land. The RFP stated that the ultimate development of the Banning Municipal Airport may include developing the area as illustrated in the Airport Master Plan, developing the Airport along with the adjacent parcels, or developing the entire site to its highest and best use.

In March 2012, City staff received three (3) qualified proposals from professional development firms in response to the RFP. The three (3) development firms included:

- Highland Fairview (Fairview Holdings, S.A., LLC);

- Messenger Investment Company (in partnership with the Rockefeller Group Development Corporation); and
- Searles Company (in partnership with DTZ-UGL Services).

In May 2012, interviews were held with all three (3) development firms and at the conclusions of the interview process, July 2012, City staff selected the Highland Fairview team based on the projected economic and employment opportunities their project will produce for the City and surrounding area. Attachment 1 is a copy of the Highland Fairview proposal.

The appropriate way to move forward with the potential development is through the establishment of an Exclusive Negotiation Agreement (“ENA”) with the Developer. The ENA process will lead the City and Developer toward, in good faith, a Development Agreement or equivalent agreement(s). The Development Agreement and/or equivalent agreement(s), if subsequently approved by the City Council, will be subject to all rules, regulations, standards, and criteria set forth in the City’s General Plan, applicable specific plans, and zoning regulations (which may necessitate amendment or other modification to accommodate the Developer’s proposed project) and the ENA, Attachment 2.

#### **ANALYSIS:**

The City’s goal to enter into exclusive negotiations with the Developer is to ultimately provide economic and employment opportunities on and around the Site while maintaining high standards of development and environmental protection. The City seeks to utilize the Site in a manner that will maximize public benefits and welfare.

The Developer is experienced in the delivery of real estate development specializing in the development of large scale commercial, industrial and residential projects. The Developer is active in the planning of numerous developments and currently owns approximately five (5) square miles of property which is in various stages of development. In the Inland Empire specifically, the Developer recently completed the 1.8 million square foot Skechers North American Operations Headquarters and is actively planning the next generation of logistics facilities, totaling over 40 million square feet on 3,000 acres of property.

The Banning Municipal Airport is an element of the national and local transportation system, which significantly affects the economic development of the City of Banning. With 5,200 ft. of runway available for takeoff, the Airport is capable of handling most private single-engine as well as corporate jet aircraft. The airport experiences approximately 10,500 annual operations and is forecasted to grow to 12,000 annual operations by 2016. Additionally, the Airport is home to approximately 56 based aircraft and is forecasted to reach 67 based aircraft. The Airport is conveniently located adjacent to both railroad and Interstate-10. The terminal/airport administration building is situated on the south side of the runway near the Runway 8 threshold and is accessible from Barbour Street. With 70 hangers and 25 tie-downs surrounded by full fencing and security lighting, the Banning Municipal Airport offers increased safety for overnight parking of aircraft. The Banning Municipal Airport facilities also include one terminal building, one facility capable of housing a fixed based operator, six T-hangers, three conventional hangers, and fueling facilities.

The ultimate goal of the proposed project is to provide economic and employment opportunities for the community, while maintaining high standards of development and environmental protection. The

Developer represents that it will develop the proposed project consistent with all laws, ordinances, regulations, and requirements of the City of Banning, including but not limited to, the City's Zoning Code and General Plan. It may be necessary to include zoning and General Plan amendments for the project.

The Developers proposal outlines the proposed project and indicates a focus on logistics as its primary land use. As outlined in the Developers narrative description for the project, logistics is a key industry in Southern California and a critical element of its economy. The Inland Empire region is uniquely positioned and has special locational advantages in the goods movement industry. The proposed project will meet the needs of the growing logistics industry and provide for economic growth in the City of Banning and surrounding area. Development of the proposed project will:

- \* Provide for a land use and infrastructure plan that will support the creation of a major job center in the City of Banning;
- \* Establish Banning as a prime location for the logistics industry;
- \* Create a project that will provide a balanced approach to the City's fiscal viability, economic expansion and environmental integrity;
- \* Significantly improve the City's jobs to housing balance; and
- \* Provide thousands of local construction jobs during the project's build-out phase.

The City and Developer desire, for the period set forth in the ENA, to continue negotiating diligently and in good faith to prepare a long-term lease agreement, facilitate a disposition and operation agreement, purchase and sale agreement, disposition and development agreement, owner participation agreement, or equivalent agreement(s) effecting the conveyance of the City owned properties to the Developer and setting forth the terms of a project consistent with the Developers March 2012 proposal (each and collectively, a "Conveyance Instrument"). The parties currently anticipate that Conveyance Instrument will, at least initially, convey Site occupancy to the Developer via a long-term ground lease rather than fee title transfer.

#### **ANALYSIS:**

The City Attorney and the Highland Fairview attorney have negotiated the terms contained within the attached ENA. Both parties agree to the terms and the City Councils approval of the ENA will enable a more formal planning and negotiation process to take place and that anticipated process is summarized as follows:

1. City Council's acceptance of this Agreement is merely an agreement to enter into a period of exclusive, good faith negotiations according to the terms hereof, reserving final discretion and approval by the City as to any actions required of it.
2. If the negotiations culminate in a long-term lease agreement, facilitate a disposition and operation agreement, purchase and sale agreement, disposition and development agreement, owner participation agreement, or equivalent agreement effecting the conveyance of the City owned properties to the Developer, such agreement(s) shall become effective only after and if the

agreement(s) have been considered and approved by City Council after a public hearing in accordance with law.

3. Nothing contained herein shall constitute a waiver, amendment, promise or agreement by the City (or any of its departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of any approval, permit, consent or other entitlement in the exercise of City's regulatory capacity or function.

4. It is expressly understood and agreed by the parties that this is an agreement regarding the conduct of contract negotiations only and does not convey any interest in the Site whatsoever. It is further agreed and understood that this Agreement does not imply any obligation on the part of the City to enter into any agreement that may result from negotiations contemplated herein.

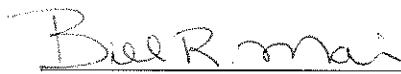
The City of Banning is actively concerned with the quality of life offered to our citizens and is constantly striving to improve our level of service. On March 11, 2011, the City Council adopted the Banning Strategic Plan to address the vision for the future of Banning. One of the goals outlined in the Strategic Plan is "Generating new business opportunities and supporting existing businesses that generate jobs and revenue." The Developers proposed project addresses this goal and a potential multi-million dollar investment in our community which would not only serve our existing resident and business base, it would also attract outside interest in to our community.

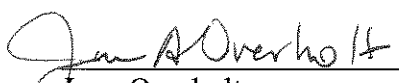
**FISCAL DATA:**

There are no fiscal impacts associated with the approval and execution of the ENA.

**RECOMMENDED BY:**

**REVIEWED BY:**

  
\_\_\_\_\_  
Bill R. Manis  
Economic Development Director/  
Public Information Officer

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

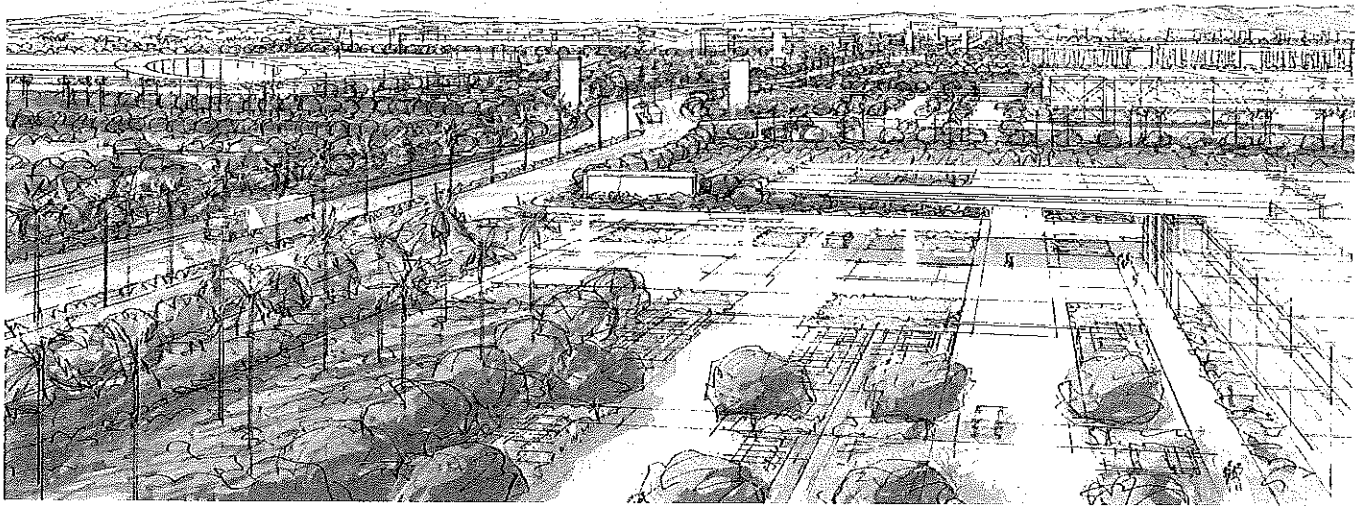
**APPROVED BY:**

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

**Attachments:**

1. Highland Fairview Proposal
2. Exclusive Negotiation Agreement

**ATTACHMENT 1**  
**HIGHLAND FAIRVIEW PROPOSAL**



## **Request for Proposals**

Development Opportunity  
**BANNING MUNICIPAL AIRPORT**  
186 acres and adjacent properties

### **Submitted to:**

Community Development Department  
City of Banning  
99 E. Ramsey Street  
Banning, California 92220

### **Submitted by:**

**Highland Fairview**  
14225 Corporate Way  
Moreno Valley, California 92553



March 29, 2012

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## Highland Fairview

14225 Corporate Way  
Moreno Valley, CA 92553  
Tel: 951.867.5327 Fax: 951.867.5395

March 29, 2012

Community Development Department  
City of Banning  
99 E. Ramsey Street  
Banning, CA 92220

### Re: Request for Proposals

Fairview Holdings, S.A, LLC is proud to present this proposal for Development of the Banning Airport Property. This unique property requires a very sensitive approach to development. The size of the property and its visibility will set the tenor for the future of the City of Banning for years to come. The City has an opportunity to establish Banning as a hub for logistics development and an attractor for high-end corporate development that will cement its financial future.

The development team assembled has a wealth of experience in developments of this nature and the supporting team of consultants are top in their fields. It will take a team with this level of experience to make certain that the property is developed to its highest potential. A project of this nature will have a profound impact on every aspect of the community. Not only will there be a strong economic effect, but there will be ripple benefits to the balance of the City that will enhance the lives of the residents of Banning. Job growth, increased property values, increased sales tax revenues and increased property tax revenues will afford the City the opportunity to offer its citizens an upgraded level of services and will improve the quality of life in Banning.

Information on the following pages is responsive to the Request for Proposal issued by the City. The members of the development team look forward to working with City staff to make this exciting opportunity a reality. We are ready to meet with staff and Council members to answer any questions and move this project forward as quickly as possible.

Respectfully submitted,

Iddo Benzeevi  
President and CEO

## **Introduction**

In response to the Request for Proposals issued by the City of Banning, this information packet sets forth the vision for an adaptive re-use of the Banning Airport Property. This is a unique opportunity for the city to reposition the airport property to derive the highest utilization and benefit for the community, becoming a catalyst and an important part of a rebirth in economic activity on the south side of I-10 in the City of Banning. The development team envisions a whole new development strategy for the Airport Property that will serve to set the City of Banning apart as a leader of the Southern California logistics industry. The following sections provide a very preliminary overview of the development opportunity. The details of the project will be expanded upon during the exclusive negotiating period. The developers envision a project that will bring substantial job growth and increased economic activity to the City of Banning, providing a stable financial foundation for the City for years to come.

## **Narrative Description of Project**

The proposed project will focus on logistics as its primary land use. Logistics is a key industry in Southern California and a critical element of its economy. The Inland Empire region is uniquely positioned and has special locational advantages in the goods movement industry. Nearly half of all goods entering the United States come in through the Ports of Los Angeles and Long Beach. The LA basin is the leading and primary logistics center for the United States. International trade is now the engine of the global economy and is expanding rapidly, growing from \$6 trillion in 2000 to over \$15 trillion today. This international trade will continue to grow and feed our economy as evidenced by the growth in container flow through the Los Angeles/ Long Beach ports. The port container volume is now around 10,000,000 TEU and is projected to grow to over 40,000,000 TEU by 2035, nearly quadrupling in just 23 years. The logistics sector has now evolved into a sophisticated industry requiring ever increasing skills with wages now exceeding those in manufacturing as a whole.

The project will meet the needs of this growing logistics industry and provide for economic growth in the City of Banning. Using industry standards for evaluating projects of this nature, at build-out, the project can be expected to generate an annual economic benefit to the local economy in the range of \$150,000,000 to \$200,000,000 depending on final coverage. Further, the project can be expected to generate from 1,300 to 2,000 permanent jobs assuming the same parameters. These factors make the project a tremendous asset to the community and will serve to greatly enhance the lives of the citizens of Banning.

Banning is uniquely located along the I-10 corridor and is within a 90-minute drive of every market in Southern California and within the overnight trucking distance of the 11 western states. Development of the project will:

- Provide for a land use and infrastructure plan that will support the creation of a major job center in the City of Banning.
- Establish Banning as a prime location for the logistics industry.
- Create a project that will provide a balanced approach to the City's fiscal viability, economic expansion and environmental integrity.



- Significantly improve the City's jobs to housing balance.
- Provide thousands of local construction jobs during the project's build-out phase.

The Airport Property could be developed in conjunction with the property owned by the Morongo Band of Mission Indians (Morongo) located directly east of the project area (Section 12). Attached, as Exhibit A is a preliminary information package on the proposed Morongo project. The Developer has entered into an Exclusive Negotiation Agreement with Morongo to develop Section 12. As the Morongo plan advances, there will be tremendous opportunities to collaborate with and connect to the Airport Property and thereby dramatically increase the economic impact to the City of Banning by the virtue of additional employment opportunities and the residual and direct benefits to the surrounding businesses in Banning as a result there of.

The Project will be built to the latest, state of the art standards. The buildings will be constructed in accordance with California's new "Cal-Green" building regulations, the most stringent, environmentally friendly building code in the United States. Cal-Green is a comprehensive and far-reaching set of regulations which mandate environmentally advanced building practices and regulations which are designed to conserve natural resources and reduce greenhouse gas emissions, energy consumption and water use. In addition to environmentally responsible building design, the project will incorporate a number of sustainable design features to further reduce its environmental footprint.

- Street designs that channel run-off into landscape areas instead of storm drains.
- Accommodate and encourage the use of alternative means of passenger vehicle transportation.
- Use of recycled building materials to the extent feasible.
- Use of local building materials to the extent feasible.
- Reduction of paved surfaces within the project area.
- To the extent feasible, buildings will be designed to reduce the need for climate control systems.
- Buildings will meet LEED standards.

The project will create a world-class corporate environment that will establish Banning as a center for high quality companies and their operations for generations to come.

### **Developer Identification**

Fairview Holdings, S.A., LLC (Fairview) will be the master developer of the Airport Project. Upon finalization of the Exclusive Negotiation Agreement between Fairview and the Morongo Band of Mission Indians (Morongo) the Fairview/Morongo venture may serve as the master developer.

Highland Fairview is part of a privately held real estate development company specializing in the development of large scale commercial, industrial and residential projects. The company is active in the planning of numerous developments, including large scale, industrial, commercial, residential and medical projects.

Highland Fairview and its affiliate companies currently own approximately 5 square miles of property which are in various stages of development. In the Inland Empire region, the

company recently completed the 1.8 million square feet Skechers North American Operations Headquarters and is actively planning the next generation of logistic facilities, totaling over 40 million square feet on 3,000 acres of property.

The company is also the lead developer of a public-private partnership formed to establish a world-class medical development project that will create the next generation class of health care and wellness facilities. Highland Fairview is the master planner and developer of the 200-acre world-class wellness campus establishing the new a center of excellence in healthcare for our region. A representative sample list of on-going projects are attached illustrating the company's broad experience:

- Highland Fairview Corporate Park - Skechers
- World Logistics Center
- Aquabella
- Aquabella - Medical Campus
- Mediterranean Village
- Suelo
- Williams Island

The Highland Fairview's team is comprised of dedicated professionals with extensive experience in the planning and design of large mixed-use, master planned developments ensuring the companies projects are developed to the industry's highest standards. Highland Fairview has an in-house staff of professionals, each exceeding 20 years of experience, primarily on large scale master-planned communities. Each of these individuals are highly dedicated and will be an integral part of the project. Their resumes are included in the qualifications package.

We embrace Environmental Stewardship as a commitment to a sustainable future. Our Complete Building Life Cycle approach to development incorporates the design, construction, operation, and maintenance of buildings as an integral part of our design process. Ensuring that we can reduce the impact that building design, construction and maintenance have on both people and nature.

As president and CEO, Mr. Benzeevi is a well-known real estate expert with significant development experience in the Inland Empire encompassing large-scale industrial, commercial and residential projects.

The City of Banning is well acquainted with the Morongo Band of Mission Indians. They are a sovereign nation Native American Tribe with a tremendous presence in the Inland Empire. Their involvement in the community is unparalleled and their reputation is as one of the most well-respected and forward thinking Native American tribes in the State of California.

#### **Developer Experience and Qualifications**

As mentioned in the previous section, Exhibit B shows just some of the projects Fairview has been responsible for developing. But this is just a small sampling of the range of the team's development expertise. The members of the development team have been responsible for several additional development projects within the Pass area, including the Oak Valley master planned community, the Skechers logistics project, the Aquabella

Medical Campus in Moreno Valley, the World Logistics Center in Moreno Valley and the Moreno Valley Ranch master planned community. This local experience and knowledge makes this group uniquely qualified to bring the Airport Property to market at its highest and best use.

#### **Proposal for Disposition of Site**

The specific structure for disposition of the Airport Property will be determined during the exclusive negotiating period. The development team will consider an outright purchase of the property, a participating lease for the property or some other structure that will afford the City an opportunity to create a long-term source of cash flow for the City of Banning. The developer will be responsible for all costs of bringing the property to market and will work closely with the City to make certain that the ultimate structure is in the mutual best interest of all parties. Part of the benefit of a project of this nature is the ripple effect it will have upon the economy of the City and the region. A project of this magnitude will bring a large number of jobs to the area and will generate significant increases in property tax and sales tax income for the City.

#### **Financial Capacity of the Developer**

The development entity has significant financial resources and is well capitalized and positioned to fulfill the financial obligations of the developer. Financial information and bank references will be provided to the City if the Fairview/Morongo entity is selected as the developer of the Airport Property.

# The MORONGO Inland Port and Intermodal Center

Morongo NSN, California

An architectural rendering of the Morongo Intermodal Logistics center at night. The image shows a large, modern building with a curved, glass facade that reflects the city lights. The building is situated next to a multi-lane highway with several overpasses. The sky is dark, and the overall scene is illuminated by the building's lights and the ambient city light.

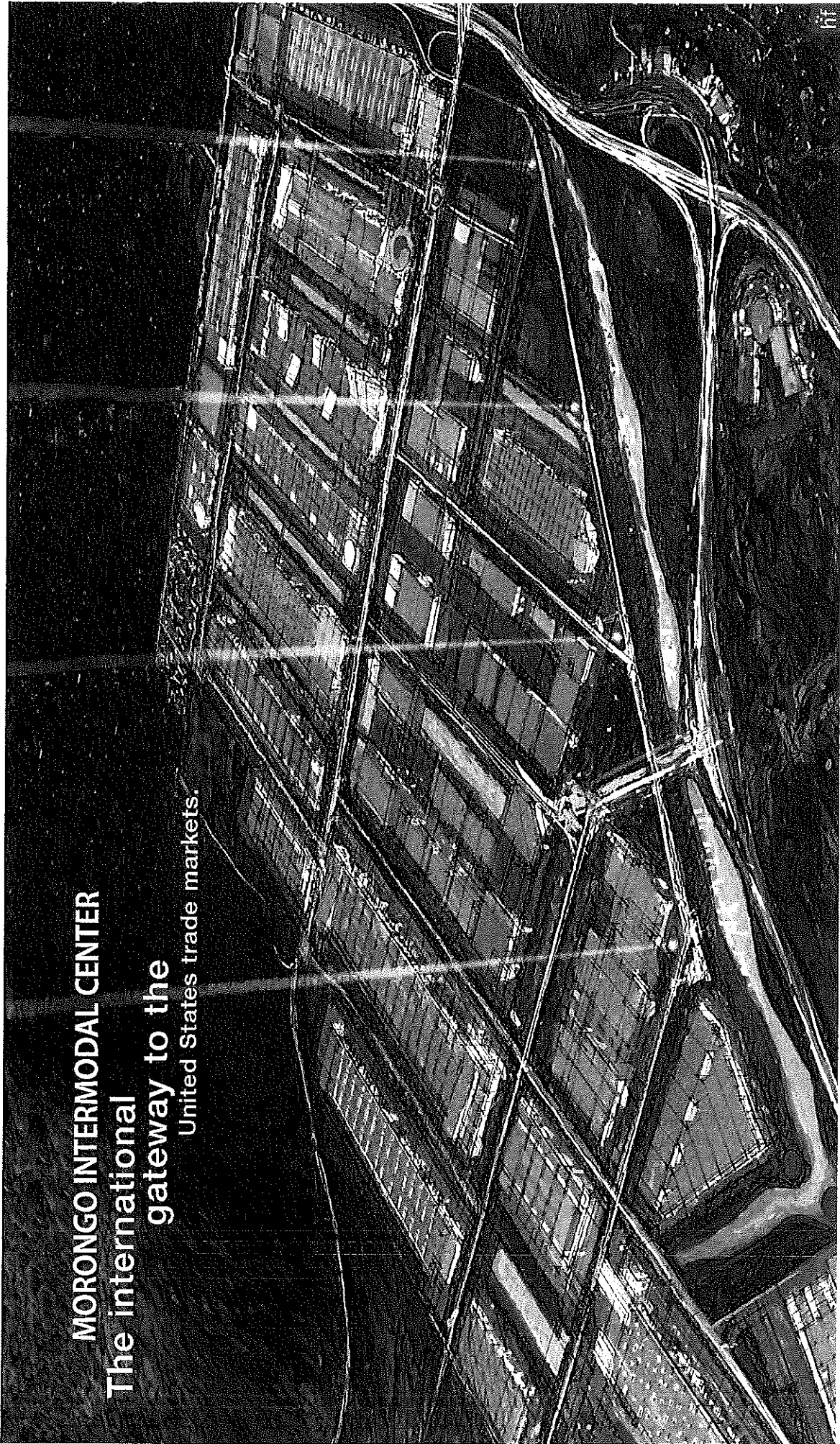
# Morongo Intermodal Logistics center Concept development study

hif



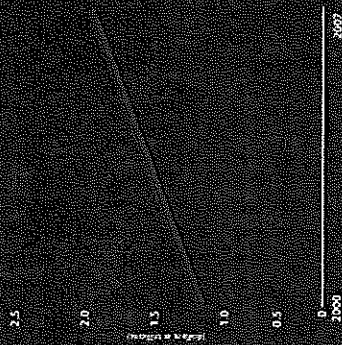
**MORONGO INTERMODAL CENTER**  
**The international**  
**gateway to the**

United States trade markets.

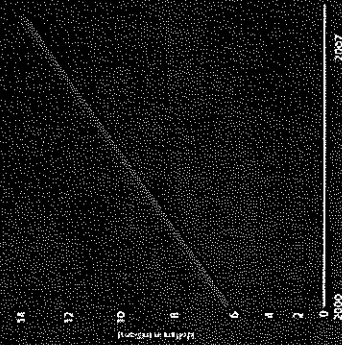


**TRADE HAS MORE THAN DOUBLED  
OVER THE PAST 7 YEARS TO \$14,000,000,000,000**

Growth in U.S. Imports, 2000 to 2007



Growth in Worldwide Imports, 2000 to 2007



**INTERNATIONAL TRADE IS THE NEW  
ENGINE OF THE GLOBAL ECONOMY**

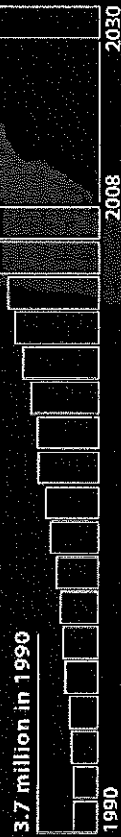
**WHEN IT COMES TO GLOBAL TRADE,  
ALL ROUTES LEAD TO SOUTHERN CALIFORNIA**

**NEARLY HALF OF THE GOODS COMING TO THE  
U.S. FLOWS THROUGH THE LOS ANGELES/LONG  
BEACH PORT COMPLEX.**

The statistics are staggering: nearly half of the goods coming to the U.S. flow through Southern California ports—and nearly 40% are consumed in Southern California. In fact, the Port of Los Angeles is the busiest container port in the U.S., with the Port of Long Beach ranking as second busiest.

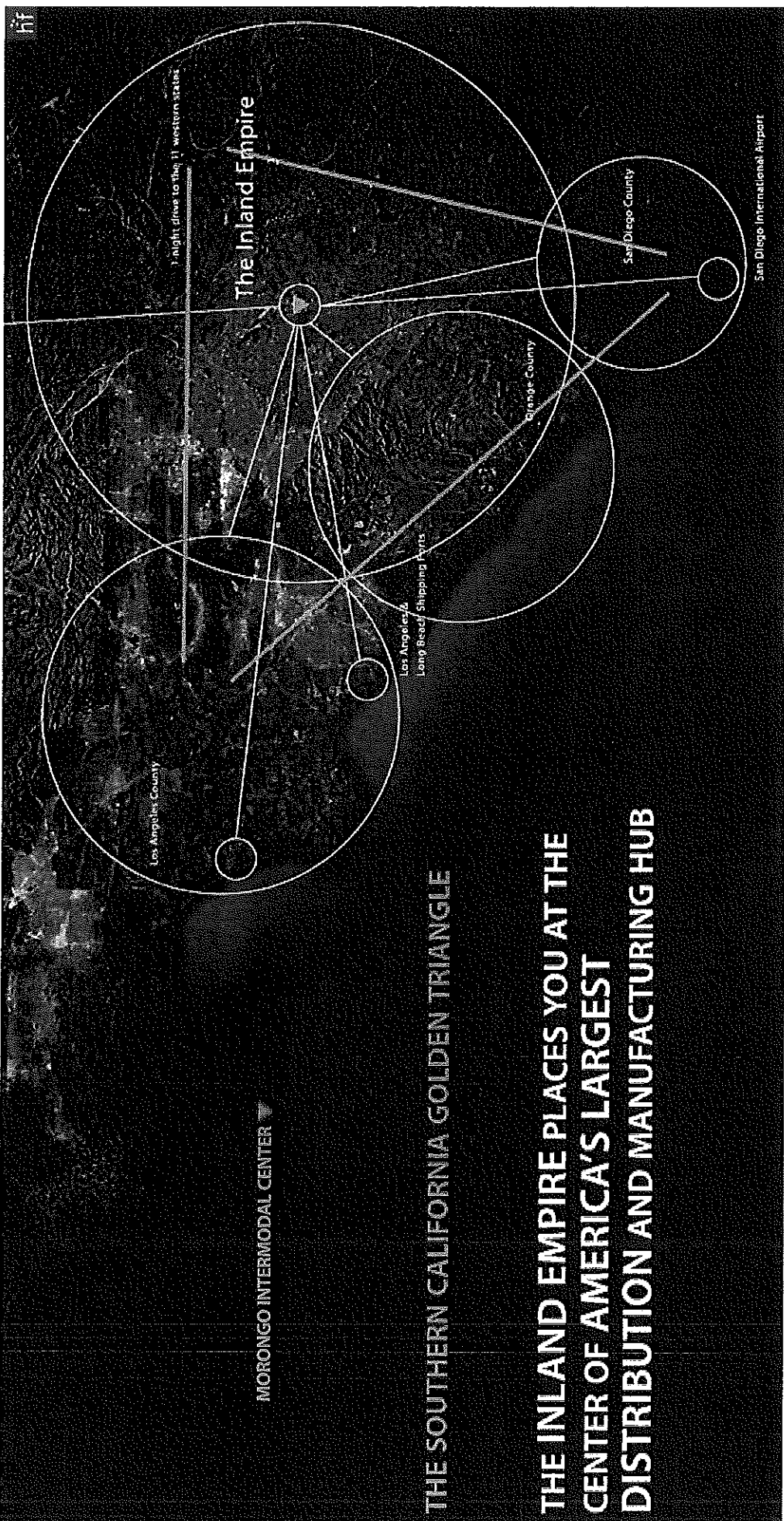
hi **Morongo Intermodal Center**

42.5 million by 2030E



Los Angeles/Long Beach Container Traffic in TEUs\*  
Over 7% compounding increase in container traffic from 1990 to 2030.  
\*Twenty-foot equivalent units

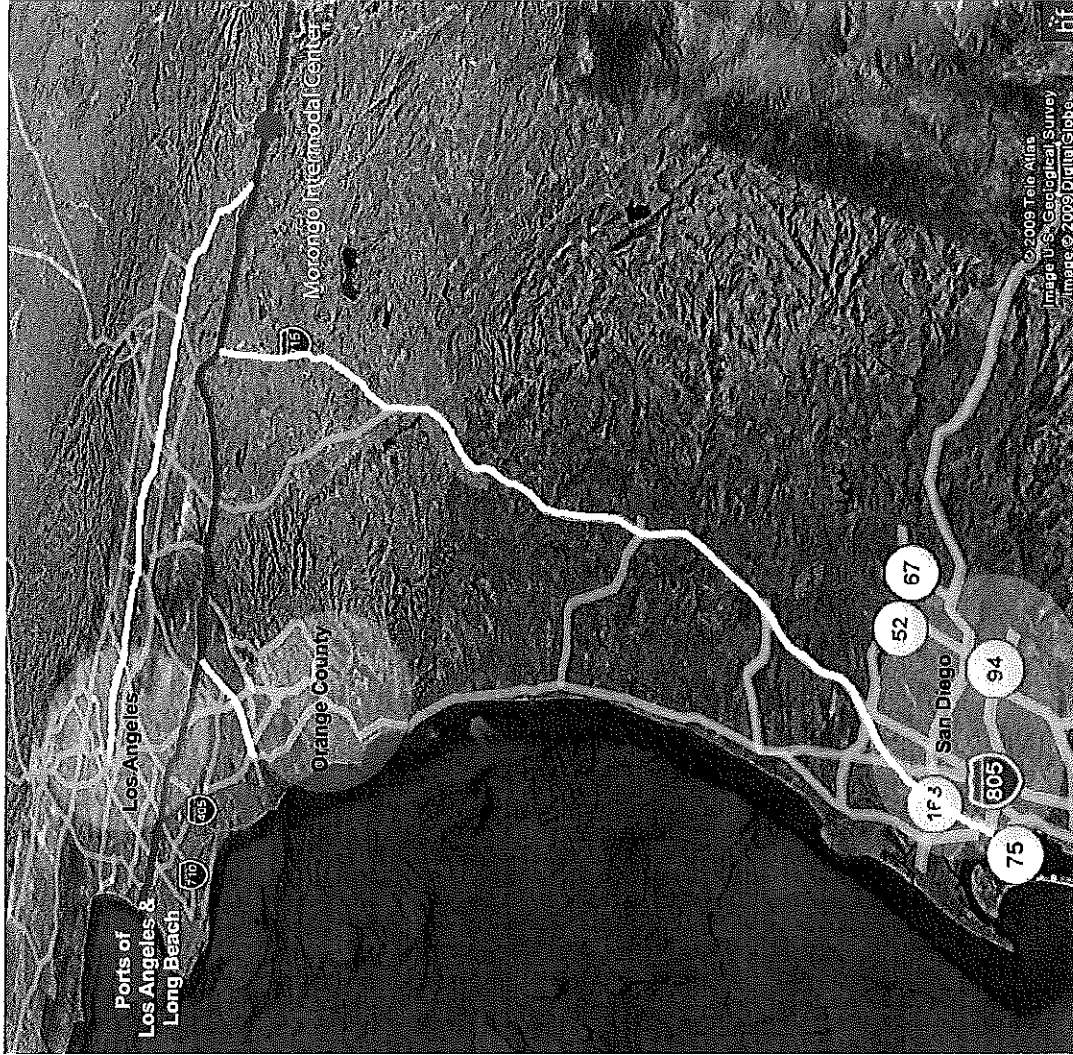


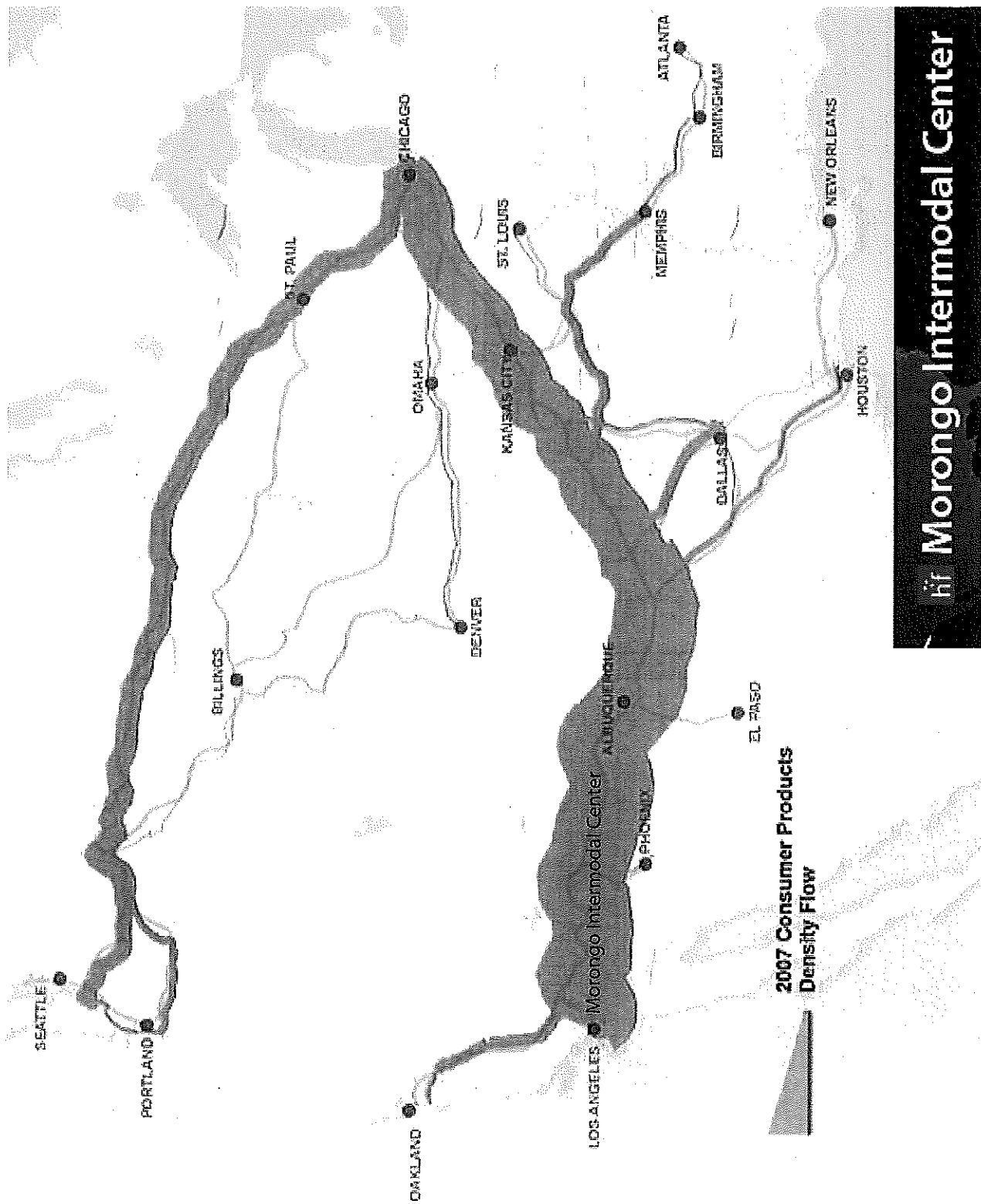


MORONGO INTERMODAL CENTER

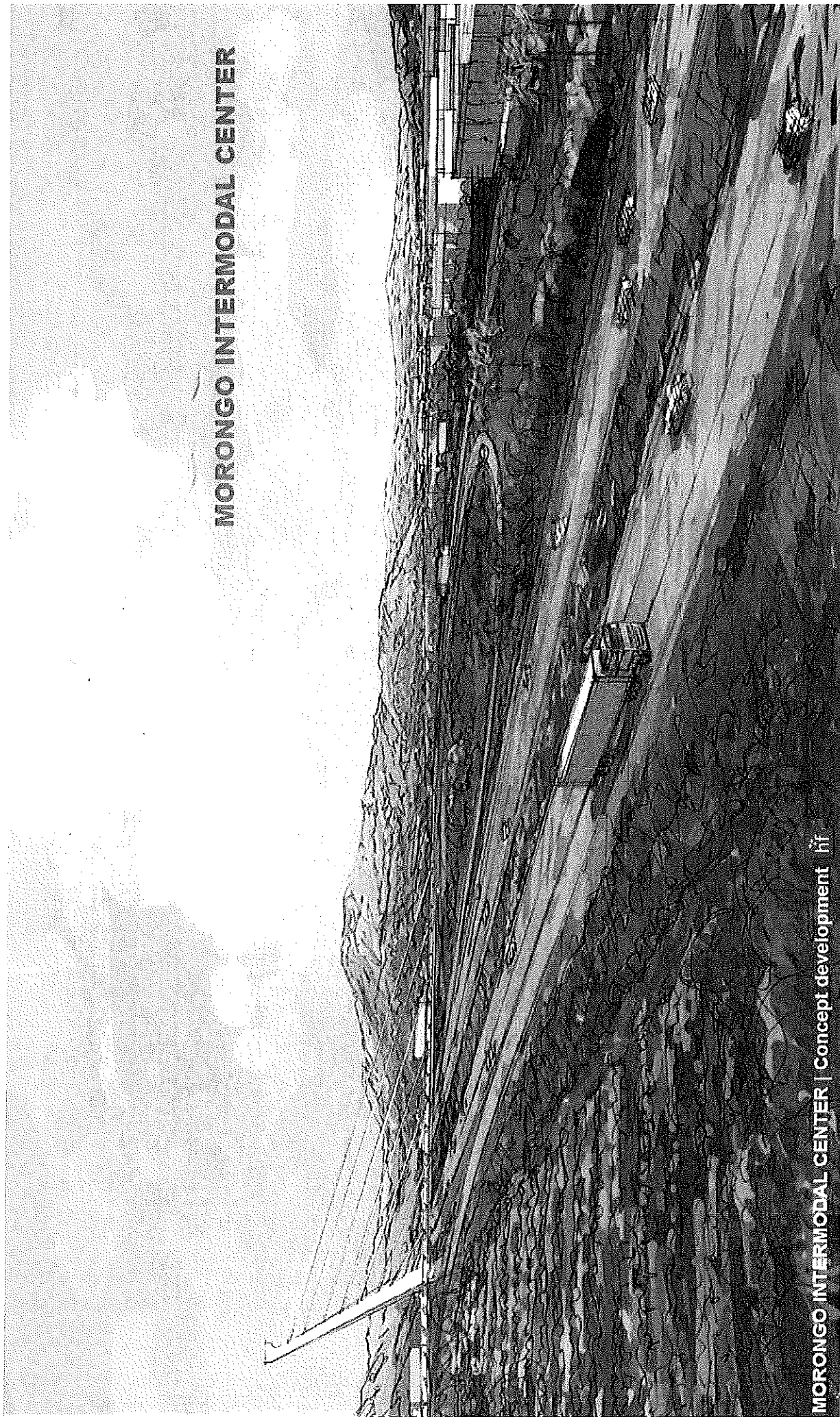
THE SOUTHERN CALIFORNIA GOLDEN TRIANGLE

THE INLAND EMPIRE PLACES YOU AT THE  
CENTER OF AMERICA'S LARGEST  
DISTRIBUTION AND MANUFACTURING HUB





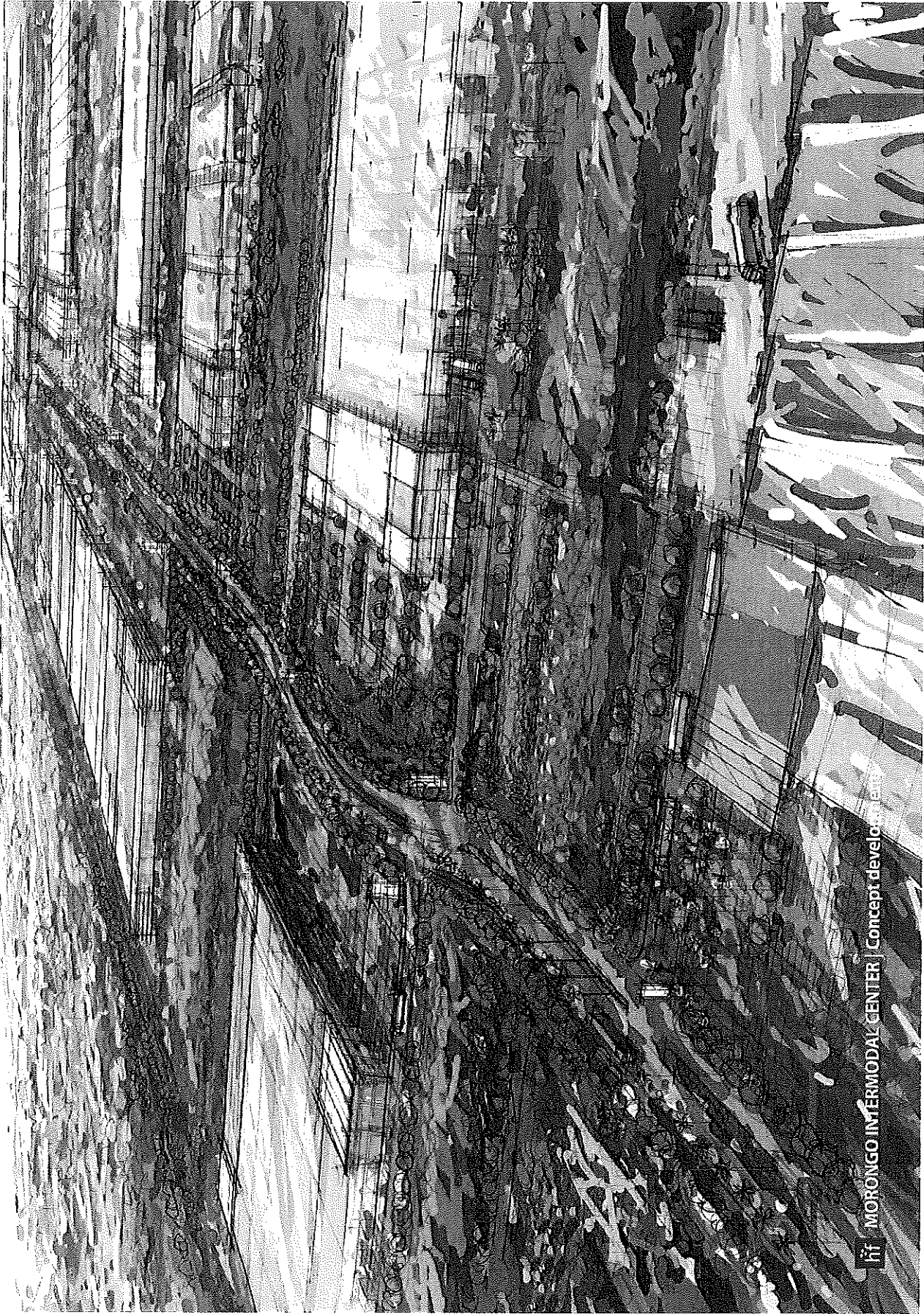
# MORONGO INTERMODAL CENTER



MORONGO INTERMODAL CENTER | Concept development hif







111 MORONGO INTERMODAL CENTER | Concept development



# MORONGO INTERMODAL OPERATIONS SCHEMATIC

An intermodal rail yard is a facility where goods in trailers or containers are transferred between trucks and freight trains. The intent is to have goods travel long distance by rail and move locally by truck. Generally, such a yard consists of loading tracks and paved areas to support lifting equipment, truck movements and storage areas. A gate area, similar to a toll booth facility, is provided to control access to the yard and log vehicles in and out.

## BULK FREIGHT

Bulk freight, such as lumber, building materials, and paper goods, is typically off-loaded using forklifts and stored prior to loading onto trucks. Bulk products such as flour and cement are delivered in closed container cars and pumped directly into trucks.

## TRAILER/CONTAINER STORAGE

Parking areas are used to store loaded trailers that are awaiting pick-up by the delivery driver, and empty chassis awaiting inbound containers on rail.

## CONTAINERIZED FREIGHT

Containerized freight, which includes trailers mounted on flatcars or DPO containers and trailers (COFO) is unloaded from the intermodal railcar using a straddle carrier or side loader. If the load is a trailer, it is lifted and placed on the pavement for transport to a storage area. If the load is a container, it is placed on a trailer for transport within the yard. Outbound containerized freight is typically spotted along side the track for the length of the rail cars. The loading equipment then travels down the line lifting each load. This helps to minimize the amount of time that a railcar spends in the yard.

## GATE AREA

A gantry structure similar to a toll booth is used to control vehicles entering and exiting the yard. Check-in and check-out procedures include the following: verification of truck and trailer ID numbers; inspection of the container/trailer for damage and verification of the seal condition of the container/trailer.

## MOVING FREIGHT IN THE YARD

A small tractor, called a yard hostler, is used to move trailers/containers to and from trackside. The intent is to minimize the movement of delivery trucks within the yard. To do this, transfers from the hostler to the delivery trucks occur in a designated transfer area.

## DELIVERY OF GOODS

Products would be delivered to the **MORONGO** area by train. Those rail cars destined for Long Beach would travel during available operating hours via the LIRR to the intermodal yard. Once at the yard, the rail cars would be pulled onto the container or bulk working tracks as appropriate. The rail cars then would be unloaded and reloaded for an outbound trip. The same locomotive used for the inbound trip would take reloads and empty cars for the outbound trip. When trains arrive, they would be stored temporarily on holding tracks within the yard.

hf

Note: Drawing is for illustrative purposes only and is not intended to represent the design.



 MORONGO Intermodal Center

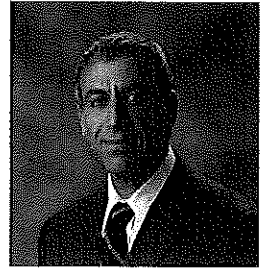


# Company Bios

## **Iddo Benzeevi**

President

Chief Executive Officer



Iddo Benzeevi is an entrepreneur and co-founder of Highland Fairview. As president and CEO of the company Mr. Benzeevi oversees all aspects of the company's operations. Mr. Benzeevi has extensive development experience with large scale mixed-use master planned developments. He is adept at developing livable and exciting places for people to live, work and enjoy. His unique vision and expertise includes the technical direction and management of large, multi-disciplined teams, including facilities planning and programming of civil infrastructure systems.

## **Danette Fenstermacher**

Chief Operating Officer

Executive Vice President



Danette Fenstermacher has held a variety of executive real estate development positions spanning over 35 years. Prior to joining Highland Fairview, she was Senior Vice President & Executive Committee member of Mission Viejo Company, the master planner and developer of over 38,000 acres of land, 87,000 residential units and more than 32 million square feet of nonresidential property in California and Colorado. She also served as the Company's President of the Financial Services entity. Prior to joining Mission Viejo Company, she was with PricewaterhouseCoopers. Ms. Fenstermacher is a Certified Public Accountant and a California Real Estate Broker

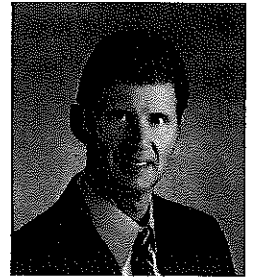
- Mission Viejo Company - master planner and land developer  
Mission Viejo, CA
- 10,300 acres-31,000 residential units / 9.1 million sq. ft. of nonresidential  
Aliso Viejo, CA
- 6,600 acres-20,000 residential units / 7.6 million sq. ft. of nonresidential  
Highlands Ranch, CO
- 21,500 acres - 35,900 residential units and 14.7 million sq ft of nonresidential

# Company Bios

## **Joe Anfuso**

Chief Financial Officer

Mr. Anfuso has extensive financial experience across a broad spectrum of Real Estate operations. Prior to joining Highland Fairview, Mr. Anfuso was the CFO of Shea Homes San Diego. Joe was responsible for the financial operations and strategic planning of San Diego's largest privately held homebuilder, with revenues in excess of \$425 Million. Before Shea, Joe practiced various aspects of public accounting, ranging from forensic accounting and investigative auditing to accounting for private industry as both an internal auditor and controller. Joe is a CPA, obtaining his BBA in Accounting and MBA from the University of San Diego. Joe also possesses a California Real Estate Brokers and General Contractors License. Joe is the chairman of the Residential Real Estate Committee for Burnham-Moores Center for Real Estate. Recognized as an industry expert, Joe has been a frequent contributor on CNBC television, discussing the housing and real estate markets.



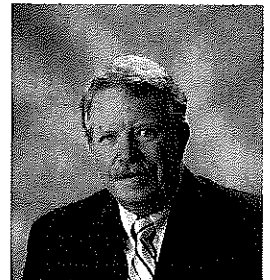
## **Wayne Peterson**

Vice President Community Planning

Wayne Peterson has over 34 years of entitlement experience with cities and counties throughout Southern California including master community planning and site-specific high-rise residential, large-scale commercial/industrial, recreational, and mixed-use projects. Previously at Mission Viejo Company, he directed the California entitlement program for 17,000 acres, 51,000 units and 16.5 million square feet of nonresidential property, at the Mission Viejo and Aliso Viejo projects. Mr. Peterson owned and operated a privately held consulting firm for seven years and served as Vice President of Land Development at RBF Consulting.

Entitlement experience with cities and counties throughout Southern California including master community planning and site-specific high-rise residential, large-scale commercial/industrial, recreational, and mixed-use projects.

- 17,000 acres - 51,000 residential units / 16.5 million sq. ft. of nonresidential uses Mission Viejo and Aliso Viejo. CA

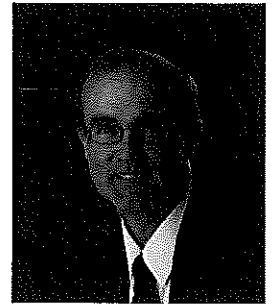


# Company Bios

## **Brian Hixson**

### **Vice President of Land Development**

Brian Hixson has held executive positions at top civil engineering firms over 25 years, including RBF. He is an experienced project manager, specializing in residential and commercial development projects. He has direct design engineer experience, including grading and drainage improvements, agency coordination, tract layout, utility design and processing requirements for land development. He is experienced in developing master planned community concepts and implementing them through entitlements, design, bidding and construction. His experience includes project manager for large master planned projects such the 12,000 acre East Orange project with 30,000 residential units and 400 acres of non-residential uses; to smaller residential and commercial projects. He is a member of the American Society of Civil Engineers. He is a graduate of Cal Poly Pomona with a B.S. in Civil Engineering and is a Register Civil Engineer.



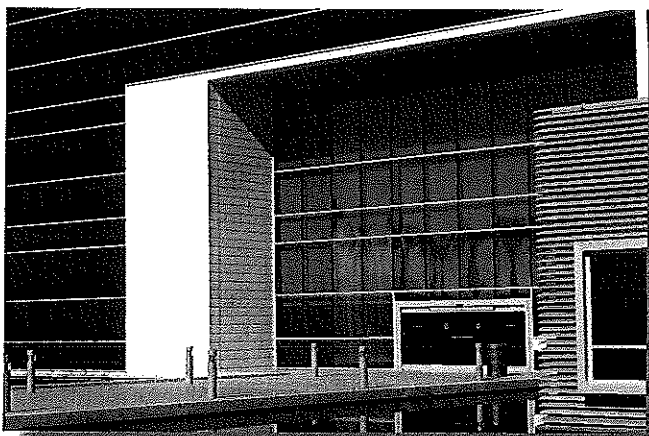
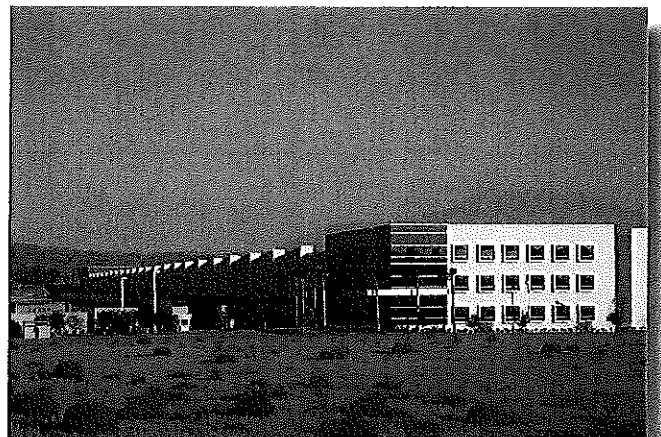
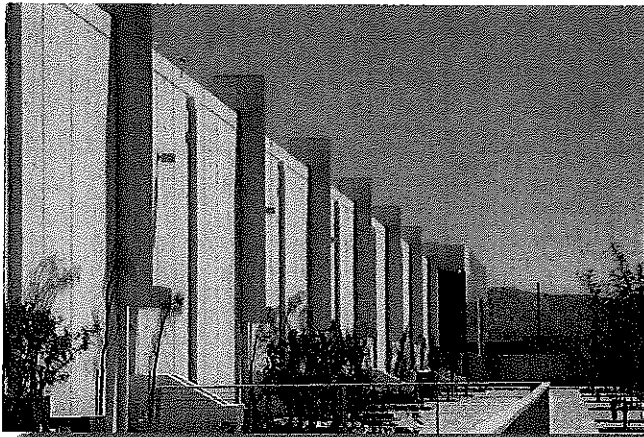
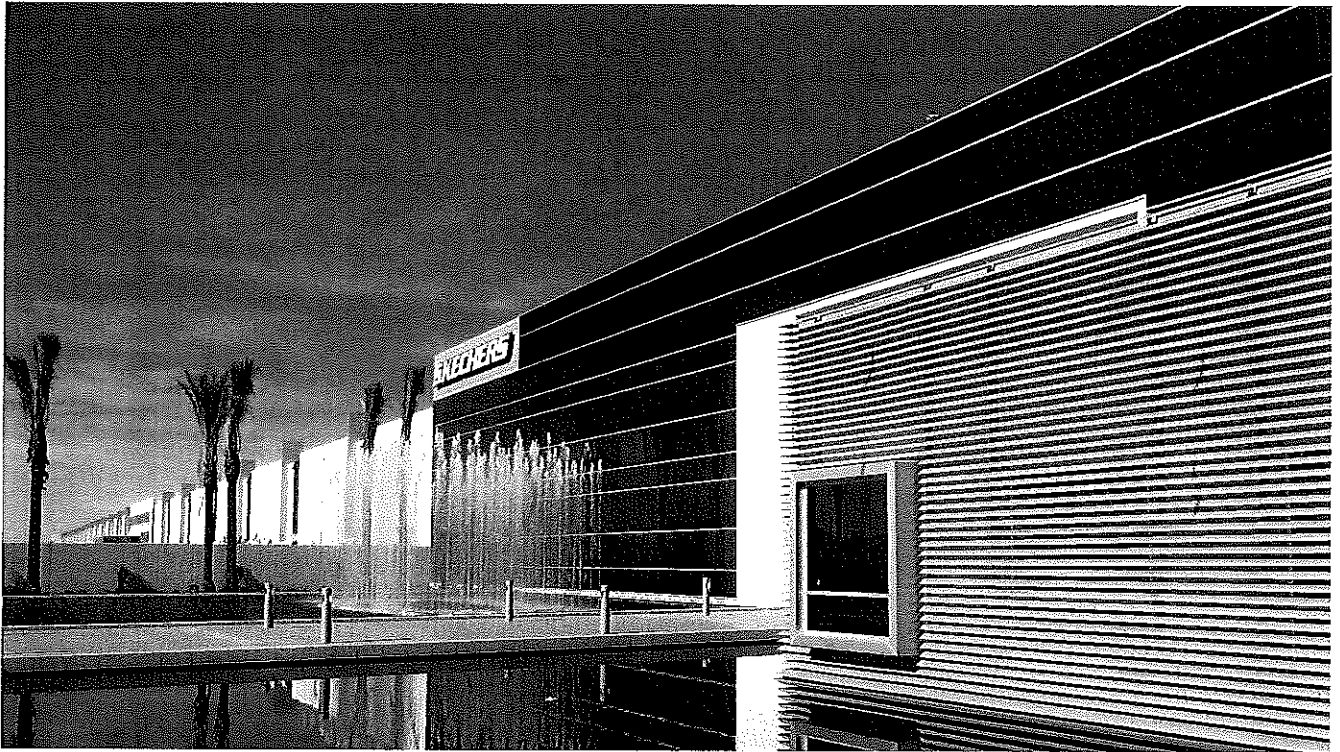
- Project Manager - East Orange: 12,000 acres 30,000 residential units / 400 acres non-residential uses, Orange California.
- Project Manager - Tonner Hills (oil field): 1,000 acres 3,500 residential units, community park, Brea California
- Monrovia Nursery: 400 acres 6,000 residential units, medium and high density, Azusa, California
- Project Engineer - Lamb Canyon Highway 79: Approximately 7 miles of roadway and drainage improvements. Improved from 2 lanes to 4 lanes, Beaumont California

## **John Ohanian**

### **Director of Development**

John Ohanian began his career with Peat, Marwick, Mitchell & Co as a CPA. He became involved in real estate development projects in 1976. In the course of his real estate development career, he has developed office buildings, over 4,000 residential units, over 175 restaurants and several master-planned communities including over 40 golf courses and well over 30,000 planned residential units.

John was responsible for the assemblage and acquisition of the 6,741 acre Oak Valley project when Landmark Land Company acquired the property and continues to serve as its project director. As a partner in Geneva Holdings, John played a key role in the acquisition and development of Talega of San Clemente, an approximate 4,000-unit residential/golf community in the City of San Clemente, California. He was also responsible for all aspects of the highly successful Crosby Estate golf community in the City of Rancho Santa Fe, California.



#### highlights

1.8 million square foot state-of-art facility

10,000 square foot retail sales

Innovative architectural design

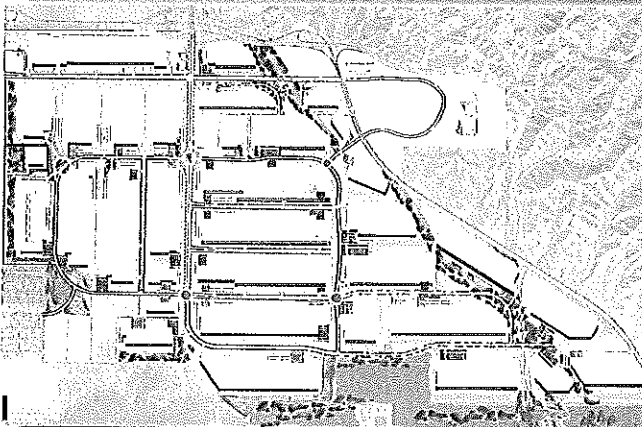
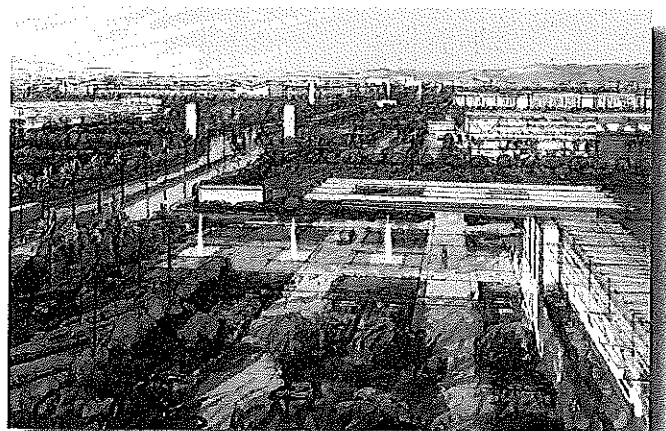
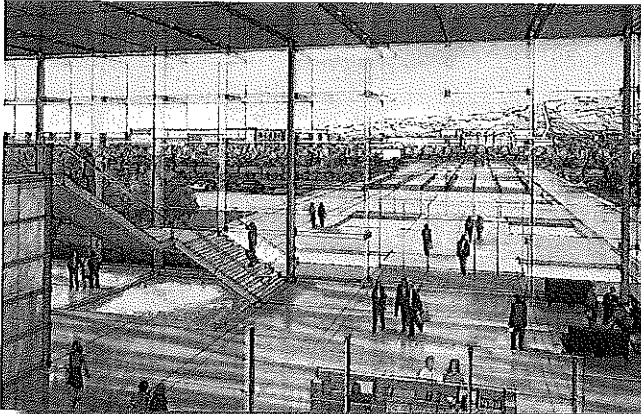
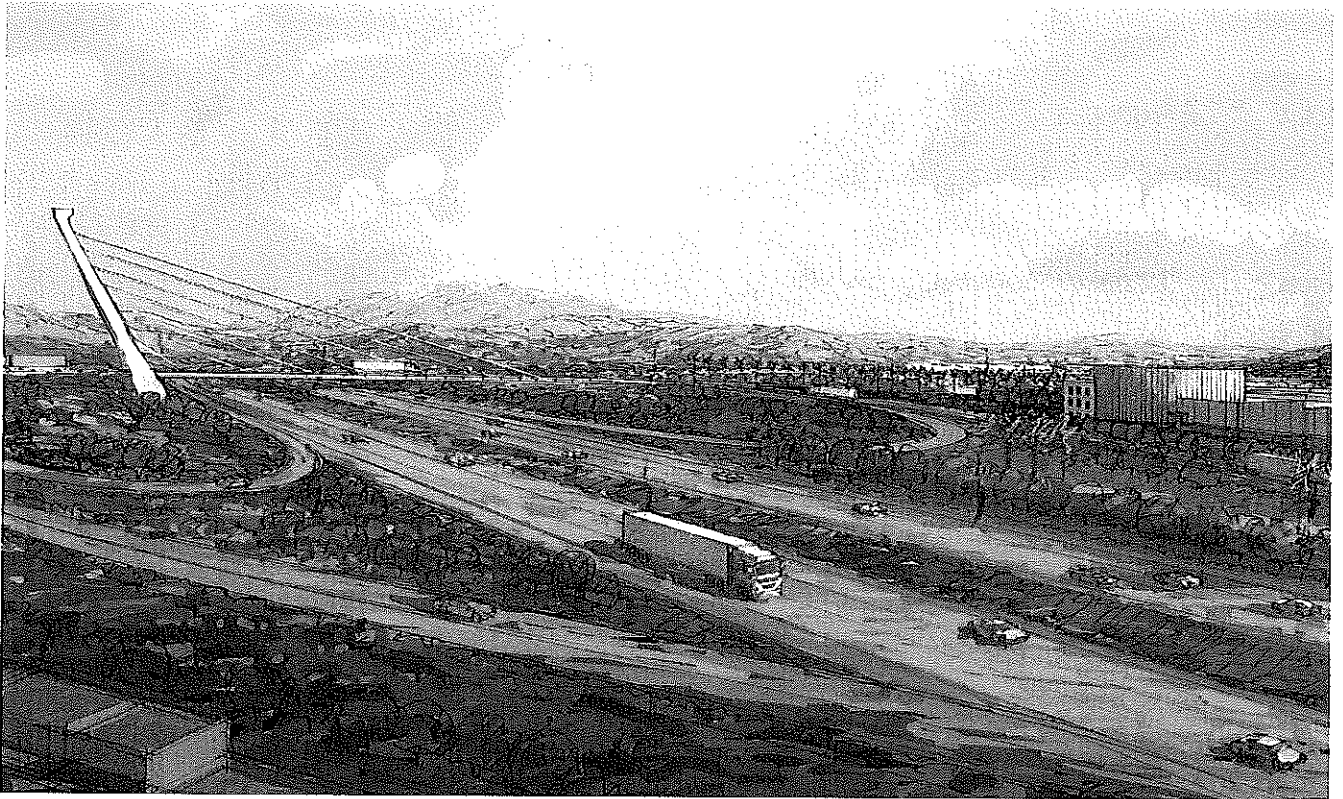
50,000 square foot solar powered office facility

Leeds certified sustainable facility

# World Logistics Center

Moreno Valley, California

**HIGHLAND**FAIRVIEW



## highlights

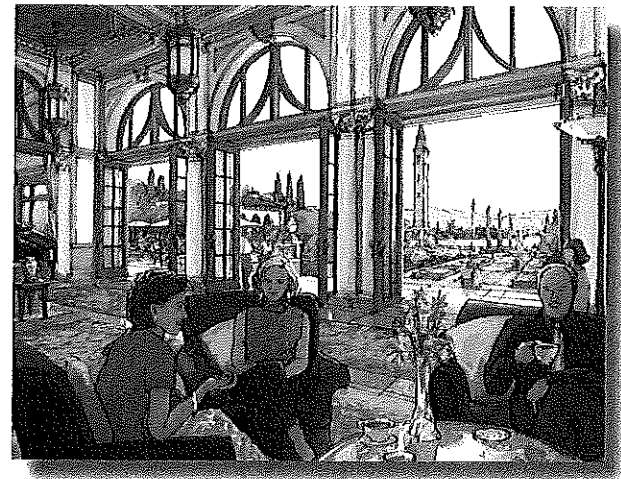
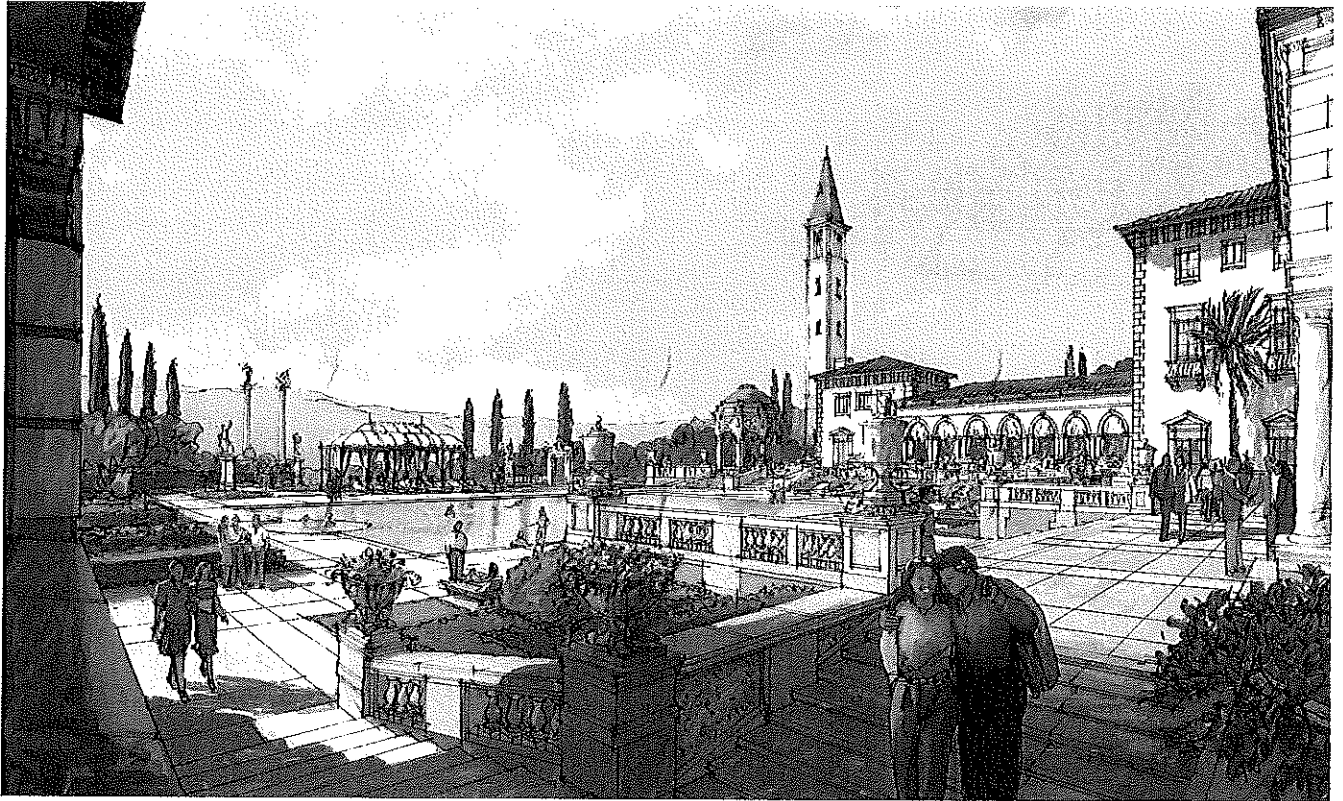
3,000 acres, 40 million square foot master planned logistics center

Native plants landscape design, net-zero water use

Sustainable design elements including solar power, rainwater harvesting and landscaping

LNG/CNG fueling facility





## highlights

700 acres, 3,000 units active adult community

Gated community, Italianesque villas and theme

Shaped lakes as an aesthetic amenity

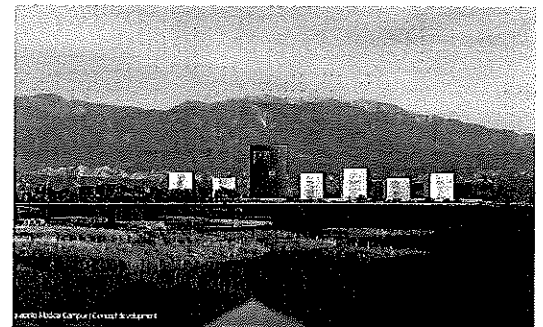
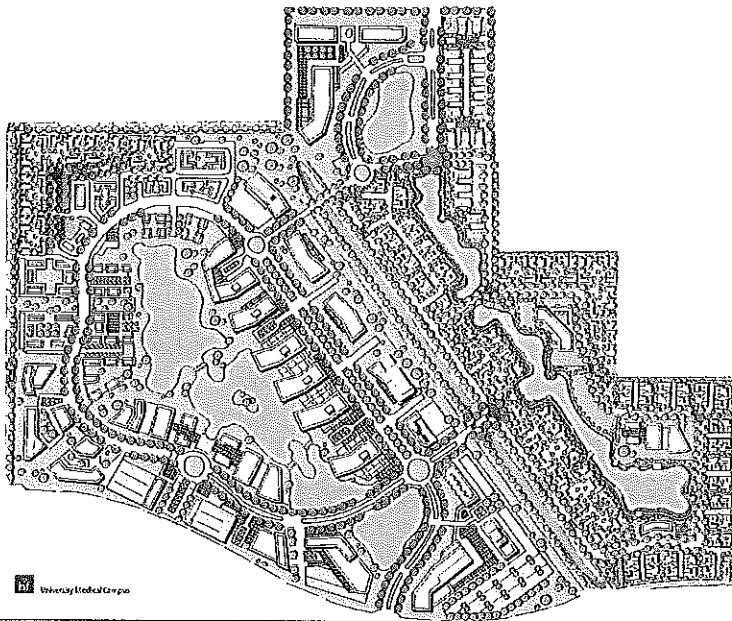
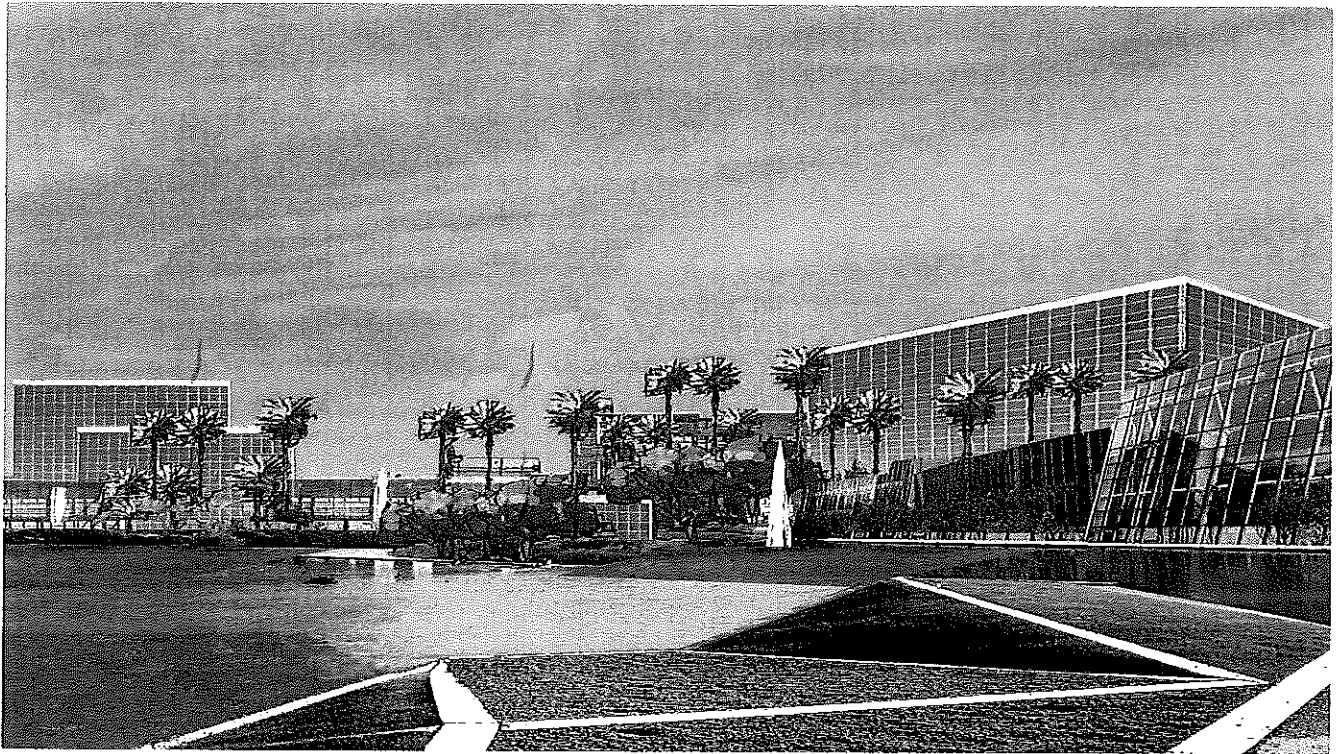
Community club-house offering "The Five-Star Life"



# Aquabella - Medical

Moreno Valley, California

**HIGHLAND** FAIRVIEW



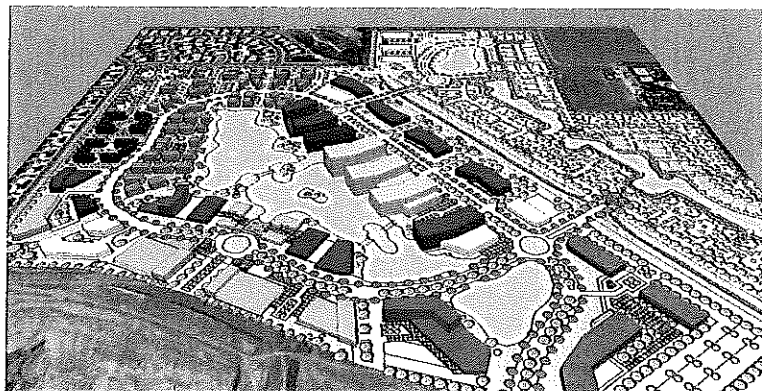
## highlights

200 acre campus

State-of-art medical facilities

Hospital, Medical offices, Educational facilities, Extended care and Assisted living

Family hotel and extended-stay facilities

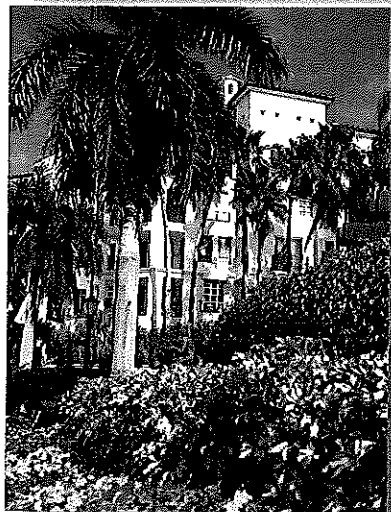
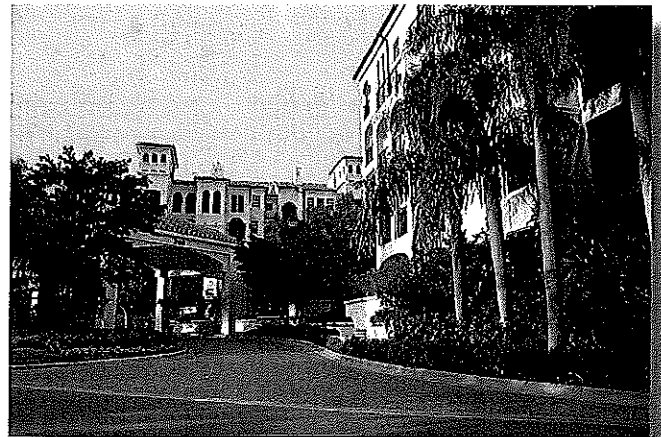


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# Mediterranean Village

Aventura Florida

**HIGHLAND**FAIRVIEW



## highlights

Multiple high-rise up-scale condominiums and apartments

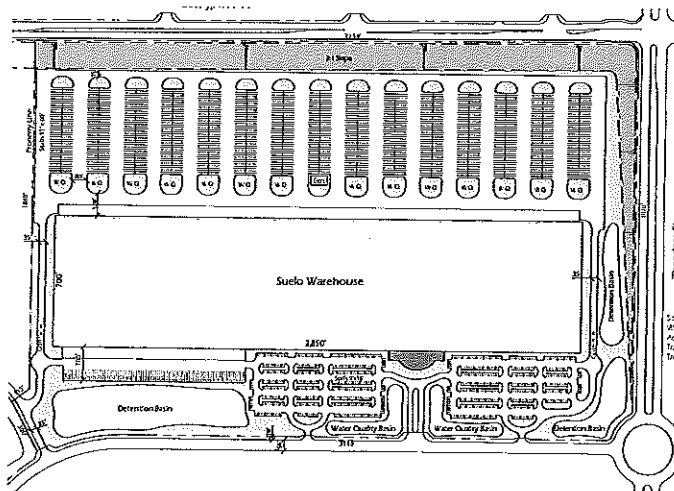
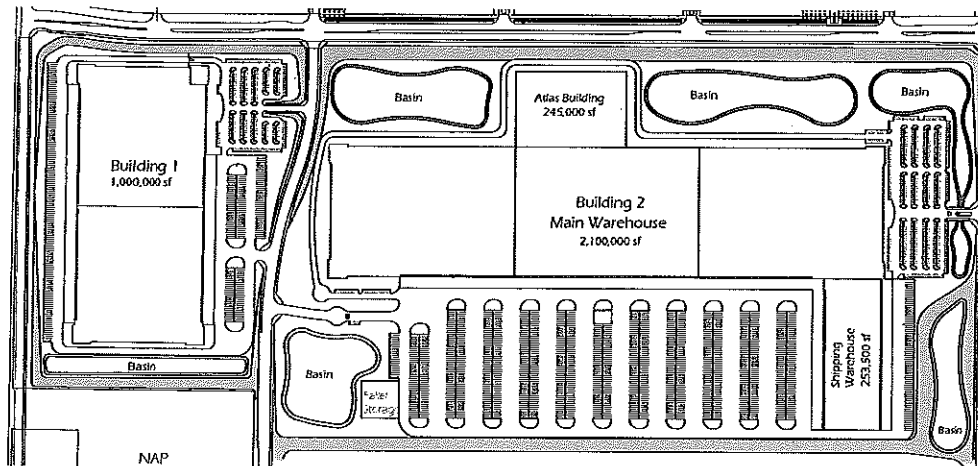
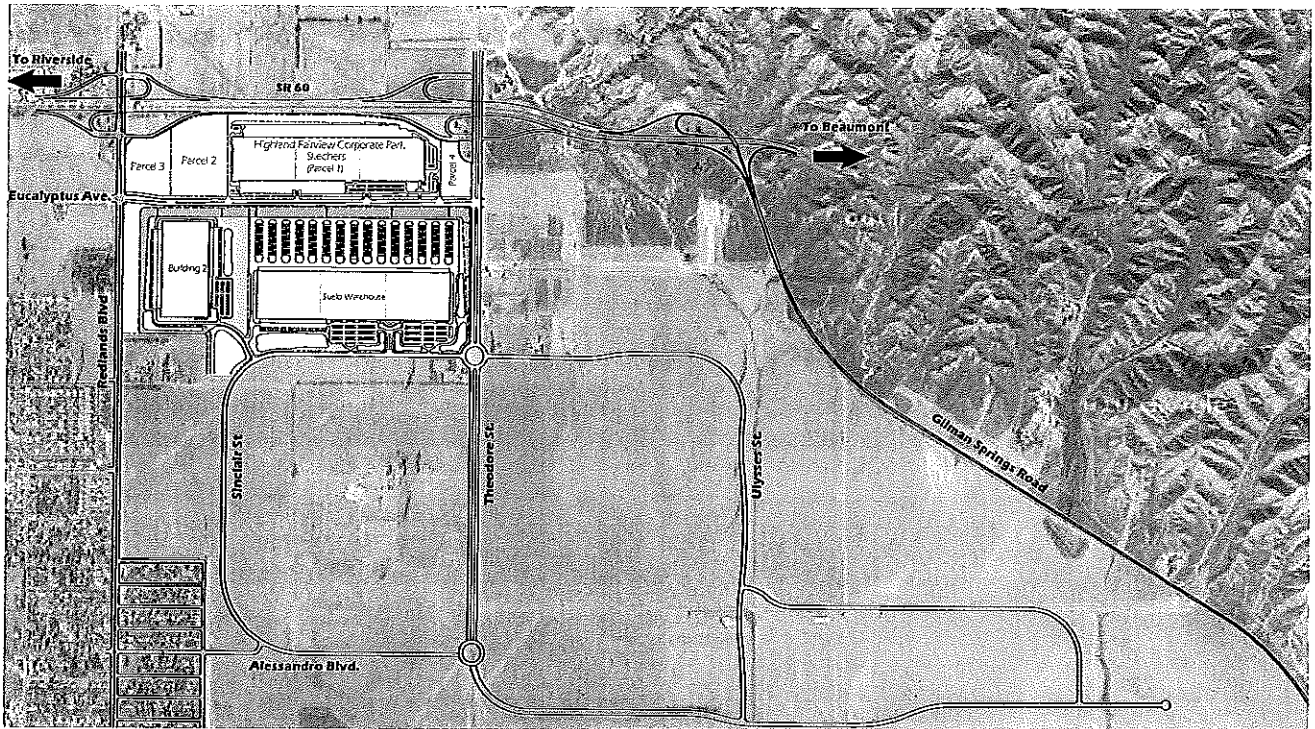
Marina and community amenities including pool and recreation center.



# Suelo

Moreno Valley, California

**HIGHLAND FAIRVIEW**



## highlights

240 acres, 2 million square logistics building

1,000,000 square foot expansion

Confidential brand name user with specific site planning requirements

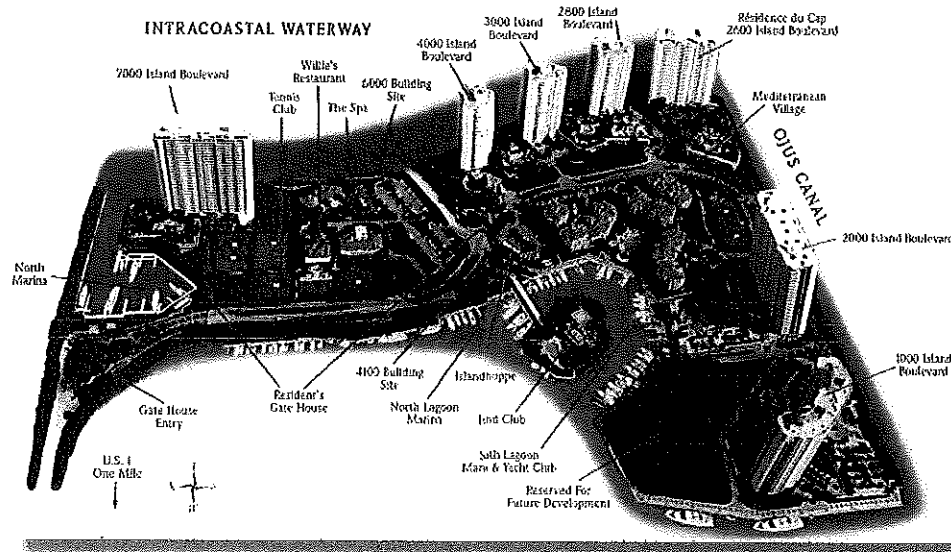
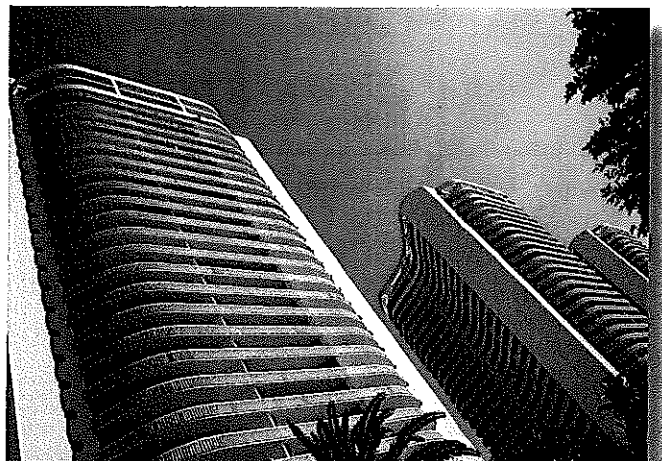
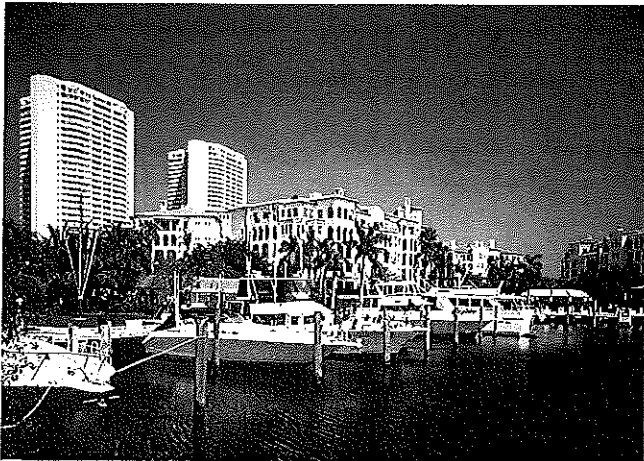
Additional trailer storage area per user specifications

*PH4*

# Williams Island

Williams Island, Florida

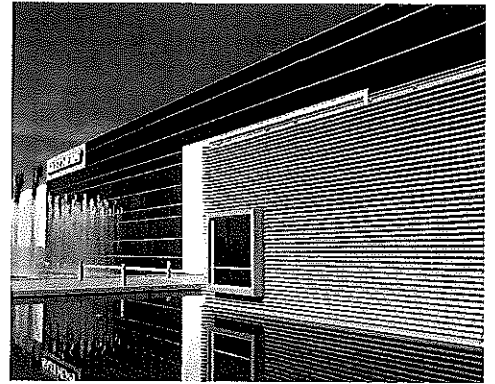
**HIGHLAND FAIRVIEW**



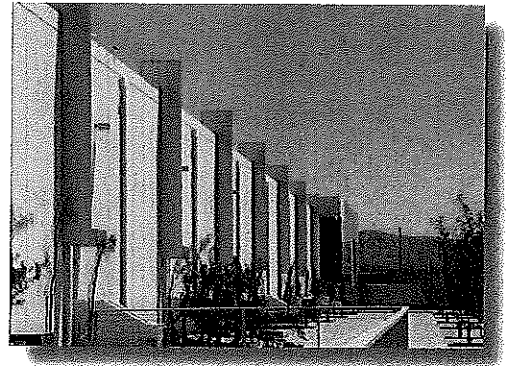
145

# References

**Henry Garcia, City Manager**  
City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, CA 92552  
hgarcia@moval.org



**Barry Foster, Economic Development Director**  
City of Moreno Valley  
13177 Frederick Street  
Moreno Valley, CA 92552  
barryf@moval.org



**Marion Ashley, Supervisor**  
Riverside County Board of Supervisors  
4080 Lemon Street  
Riverside, CA 92502  
District5@rcbos.org



**ATTACHMENT 2**  
**EXCLUSIVE NEGOTIATION AGREEMENT**

# EXCLUSIVE NEGOTIATION AGREEMENT

## BANNING MUNICIPAL AIRPORT & ADJACENT CITY-OWNED PROPERTIES

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("ENA" or "Agreement") is made this \_\_\_\_th day of \_\_\_, 2012 ("Effective Date"), by and between the City of Banning, a California general law municipality ("City"), and Fairview Holdings, S.A., LLC, a Delaware limited liability company, ("Developer"). City and Developer are hereinafter collectively referred to as the "parties" and individually as a "party".

### RECITALS

The parties enter into this Agreement on the basis of the following facts, understandings, and intentions:

A. *The Site Map:* The City owns three (3) certain parcels of land located immediately east of Hathaway Street and along Barbour Avenue, Banning, California, which is more particularly described in Exhibit "A" hereto (the "Site Map"). The Site consists of (i) the (Banning Municipal Airport is 127.15 acres/APN 532-13-012) that is improved as a municipal airstrip (the "Airport Parcel"), and (ii) two (2) adjacent parcels (Parcel 1 is 39.10 acres/APN 532-130-011) and (Parcel 2 is 20 acres/APN 532-13—018) respectively that are partially improved (the "Industrial Parcels"). The Airport Parcel has a General Plan designation of "Public Facilities" and a Zoning designation of "PF-A." The Industrial Parcels have a General Plan and Zoning designation of "Industrial." The Airport Parcel includes 5,200 feet of runway, one (1) terminal building, one facility capable of housing a fixed base operator, six (6) T-hangers, three (3) conventional hangers, and fueling facilities. B. *Site is Underutilized:* The Site is currently underutilized, falling substantially short of its commercial, industrial, revenue-generating and job-generating potential. The City therefore seeks to enter into exclusive negotiations with the Developer to enhance the Site's commercial uses thereby providing further economic and employment opportunities on and around the Site while maintaining high standards of development and environmental protection. The City seeks to utilize the Site in a manner that will maximize public benefits and welfare.

C. *Site as Centrally Located for Intermodal Freight Transport:* The Site is directly proximate to the Interstate 10, State Route 60, and freight railway systems that constitute critical freight/shipping corridors from the Los Angeles and Long Beach ports to mid- and eastern United States. This makes the Site a prime location for a logistics/intermodal freight distribution center. Logistics is a key industry in Southern California and a critical element of its economy. The Inland Empire region is uniquely positioned and has special geographic advantages in the goods movement industry. For example, the Site lies in the San Geronio Pass, which is the only geographic corridors accessible for major freight distribution between the San Bernardino Mountains on the north and the San Jacinto Mountains to the south. Such a use of the Site could provide for economic growth in the City of Banning to the extent it:

- Provides for a land use and infrastructure plan that will support the creation of a major job center in the City;
- Establish Banning as a prime location for the logistics industry;

- Provides a balanced approach to the City's fiscal viability, economic expansion and environmental integrity;
- Significantly improves the City's jobs to housing balance; and
- Provides new, local construction jobs.

D. *Proposed Project:*

In order to achieve the above-described goal of enhancing Site use, the City and Developer are considering a conceptual plan to design and construct a "logistics center" upon the Site (the "Project"). The Project contemplates design and construction of warehouse and trailer/container storage space serving cargo and bulk freight distribution, retail store space, office space, and secondary business facilities serving the logistics center (such as restaurant and fueling services). The Project is proposed to provide substantial economic and employment opportunities for the community, with a goal of generating at least 1,300 new jobs. The Project shall maintain highest standards of development, including "Cal-Green" and LEED building standards, strict adherence to building codes, best practices for environmental protection, energy efficiency, water conservation, and reduced greenhouse gas emissions. The Project will also include necessary street and utility infrastructure. As outlined in the Developer's narrative description for the Project.

E. *Further Plans Needed for Project Proposal; Compliance with Laws:* In March 2012, Developer submitted a proposal outlining the proposed Project and indicating a focus on logistics as its primary land use. The Developer's March proposal only provided a very general outline of Project potential; Developer will be required to submit more detailed concept plans, site plans and Project descriptions prior to receiving any Project entitlements from the City. Developer represents that it will submit a Project proposal that is consistent with all laws, ordinances, regulations, and requirements of the City of Banning, including but not limited to, the City's Zoning Code and General Plan. It may be necessary to include zoning and General Plan amendments for the Project, which amendments shall be the sole responsibility of Developer. This Agreement is only an agreement to negotiate and does not guaranty that the City will issue any Project entitlements and does not in any way limit the City's discretion in approving or disapproving the Project or any portion thereof.

F. *Project Contingent on Resolution of Multiple, Complex Strategic Issues.* As detailed further in the terms of this Agreement, the completion of this Project (i) may entail cooperative negotiations and arrangements with the Morongo Band of Mission Indians ("Tribe"), (ii) will require approvals from, and cooperation with, the Federal Aviation Administration ("FAA"), and (iii) will require resolution of complex environmental review issues, including the question of whether environmental review shall proceed under Federal or State legal standards of review shall apply to the extent Tribal land is incorporated into the Project. The Project may also entail delays or legal action as needed to recompense, remove, or relocate current occupants of the Airport Parcel.

G. *Identity of Developer:* The term "Developer," as used herein, refers to Fairview Holdings, S.A., LLC, a California limited liability company dba Highland Fairview, its board



and any affiliate of such entities that may be involved, if at all, in Developer's activities under this Agreement, as elected by Developer in its discretion. Developer is experienced in the delivery of real estate development specializing in the development of large scale commercial, industrial and residential projects. The Developer is active in the planning of numerous developments and currently own approximately five (5) square miles of property which are in various stages of development. In the Inland Empire specifically, the Developer recently completed the 1.8 million square foot Sketchers North American Operations Headquarters and is actively planning the next generation of logistics facilities, totaling over 40 million square feet on 3,000 acres of property.

H. *Negotiations with Goal of Reaching a Conveyance Instrument:* Subject to the contingencies generally outlined in Recital F and described further in the terms hereof, the City and Developer desire, for the period set forth herein, to continue negotiating diligently and in good faith to prepare a long-term ground lease agreement, facilitate a disposition and operation agreement, purchase and sale agreement, disposition and development agreement, owner participation agreement, or equivalent agreement effecting the conveyance of Site occupation to Developer and setting forth the terms of a project consistent with the Developers March 2012 proposal (each and collectively, a "Conveyance Instrument"). The parties currently anticipate that Conveyance Instrument will, at least initially, convey Site occupancy to Developer via a long-term ground lease rather than fee title transfer.

NOW, THEREFORE, and in consideration of the mutual covenants contained herein, the parties mutually agree to the following:

## **SECTION 1. NATURE OF NEGOTIATIONS.**

A. **Good Faith.** City and Developer agree that, for the period set forth in Section 2 herein, they will negotiate diligently and in good faith to prepare and enter into a Conveyance Instrument for the development of the Site. The development will be subject to all rules, regulations, standards, and criteria set forth in the City's General Plan and other applicable specific plans and zoning regulations (which may necessitate amendment or other modification to accommodate Developer's proposed use), and this Agreement. City agrees, for the period stated below, not to negotiate with any other person or entity regarding redevelopment or development of the Site or any portion thereof without the prior written consent of Developer, which Developer may withhold in its sole and absolute discretion. With the exception of the Morongo Mission Band of Indians Tribe and their land that abuts the City of Banning in the vicinity of the proposed Project (as detailed further in Section 1.C below), the Developer agrees not to negotiate a comparable project with any other community or property owner within a thirty-five (35) mile radius of the Site for the development of a similar project, without the prior written consent of City.

Nothing in this Agreement shall be deemed a covenant, promise or commitment by the City of Banning, or any subdivision of the City, with respect to the conveyance of property or the approval of any development of the Site or otherwise. City's acceptance of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any actions required of it. Recital

Paragraphs "A" through "H," inclusive are incorporated by reference as substantive provisions of this Agreement.

**B. Developer Deposit.** Developer acknowledges that the City shall expend substantial resources in the negotiation and performance of this Agreement. Concurrently with the full execution of this Agreement by the City and Developer, the Developer shall submit to the City a deposit in the sum of One-Hundred Thousand Dollars (\$100,000) (the "Deposit"). The purpose of the Deposit is: (i) to provide security for Developer's commitment to negotiate diligently and in good faith and perform all of Developer's obligations under the Agreement (the "Good Faith Security"); and (ii) to pay for City's third-party costs and expenses in connection with the Negotiations and preparing the additional agreements relating to the proposed Project. Such third-party costs shall include, but not be limited to, fees and expenses of outside counsel, environmental costs, soils, geotechnical, traffic, financial and economic consultants, engaged by City for services relating to the Project and preparation of agreements ("Consultant Costs"). At City's election, the Developer may provide the Deposit in the form of cash, an irrevocable direct pay letter of credit, a pledged certificate of deposit, an interest bearing account that is controlled by the City, or such other form of security acceptable to City in its sole discretion. For purposes of this Agreement the City may also reimburse itself for internal staff related costs ("Internal Costs") associated with the Agreement. If the City's Consultant Costs and Internal Costs exceed the amount of the Deposit, Developer and City shall negotiate a means by which the Deposit will be supplemented by further payments from Developer to cover the City's actual Costs reasonably incurred.

To the extent City incurs less than One-Hundred Thousand Dollars (\$100,000) in Consultant Costs and/or Internal Costs by the end of the term of this Agreement and a subsequent Conveyance Instrument has not been entered into (or a Conveyance Instrument approved as to form and content in writing by Developer) and Developer has negotiated in good faith and is not in breach of this Agreement, City shall return the portion of the Deposit for which City has not incurred Consultant Costs and/or Internal Costs along with an accounting of the Consultant and/or Internal Costs incurred by City.

If this Agreement is terminated by City at any time due to a breach of the Developer's obligation to negotiate in good faith, then the entire balance of the Deposit shall be retained by City, as more fully explained in Section 7.H.

If performance of this Agreement results in execution of a Conveyance Instrument, the disposition of the Deposit shall be as provided for in the Conveyance Instrument.

**B. Site.** The proposed Project shall be located upon all or a portion of the real property designated as the Site, substantially as shown in the "Site Map" attached hereto as Exhibit "A" and incorporated herein by this reference. City owns the entirety of the Site in fee.

**C. Nature of the Project; FAA and Tribal Issues.** The Developer intends to develop the Site in order to develop the Project as conceptually presented in the Developer's March 2012 proposal outlining the Project as a logistics center.



The design of the Project shall be consistent with the City's design guidelines. Developer shall also obtain architectural review and approval for the project from the City's Planning Commission. Developer will be solely responsible for obtaining all approvals and entitlements for the Project, arranging the financing for the Project, and constructing all improvements upon the Site, subject to the terms and conditions of the Conveyance Instrument.

Signage shall be negotiated between the parties within the parameters of the City of Banning Sign Ordinance. All signage must comply with the City of Banning Sign Ordinance.

1. *Negotiations, Entitlements, Commencement and Progress of Project are Strictly Contingent Upon Federal Aviation Administration ("FAA") Approval of Each Project Component and Ultimate Airport Closure.* The Airport Parcel is an element of the national and local transportation system, which significantly affects the economic development of the City of Banning. With 5,200 ft. of runway available for take-off and landing, the Airport is capable of handling most light single-engine, dual prop, and small jet aircraft. The airport experiences approximately 10,500 annual operations and is forecasted to grow to 12,000 annual operations by 2016.

Developer is aware that there are existing and active Federal grants and Federally-held rights encumbering the Airport Parcel, some of which mandate the City to maintain the airport use for a specified number of years in order to not breach the Federal funding the City has received to date. Should the City and Developer mutually determine that the airport use is not the highest and best use for the Project, or that the airport use is inconsistent with the Project, the Developer is responsible for all costs and duties associated with either amending the airport use or de-commissioning the airport use, and the reimbursement of any and all grants that are in default due to such changes to, or closure of, the airport. Developer and City acknowledge and accept that amendments to the Airport Parcel or changes in its use will require coordination with the FAA, a process which may take years before a resolution with the FAA may be reached; Developer and City further accept the risk that the FAA may deny the Project, in whole or in part. Developer fully accepts the risk of FAA interference with the Project, notwithstanding that Developer may expend substantial resources and monies on the Project prior to such interference.

Additionally, the Airport Parcel is home to approximately 56 based aircraft and is forecasted to reach 67 based aircraft. The terminal/airport administration building is situated on the south side of the runway near the Runway 8 threshold and is accessible from Barbour Street. With 70 hangers and 25 tie-downs surrounded by full fencing and security lighting, the Banning Municipal Airport offers increased safety for the overnight parking of aircraft. The Banning Municipal Airport facilities also include one terminal building, one facility capable of housing a fixed based operator, six T-hangers, three conventional hangers, and av-gas fueling facilities. Developer acknowledges and fully accepts that the Project may entail delays or legal actions as needed to recompense, remove, or relocate current occupants of, and/or businesses at, the Airport Parcel.

2. *Negotiations, Entitlements, Commencement and Progress of Project are Contingent Upon Cooperation with, Morongo Band of Mission Indians ("Tribe").* During the negotiation period outlined in this Agreement, the Developer is tasked with acquiring and/or

controlling various lands adjacent to the Site. This includes the Developer negotiating with the Tribe to (i) acquire Tribe-owned lands that are east of the Property (the "Tribal Lands"), and (ii) to establish an agreement with the Tribe to utilize the Tribal Lands and develop those Lands in coordination with the Project on the Site, and (iii) to coordinate with the Tribe and the City the manner in which environmental review will be undertaken for development of both the Tribal Lands and City Site (including a determination of whether environmental review will proceed under the National Environmental Protection Act ("NEPA") or California Environmental Quality Act ("CEQA")). During the negotiation period the Developer is tasked with successfully negotiating their agreement with the Tribe for this purpose. The coordinated development of both the Tribal Lands and the Project on the Site shall hereinafter be referred to as the "Overall Development".

3. *Negotiations of Project Despite Coordination of Overall Development.* If, after at least one year of good faith negotiations, the Developer is unable to negotiate acquisition of Tribal Lands as needed to create the Overall Development of both the Tribal Lands and the Site, the City may, in its sole discretion, determine to continue to negotiate the Project on the Site as a stand-alone development.

4. *Other Properties May be Added to Project or Overall Development.* Nothing herein shall prevent the Developer, with the assent of Tribe and City as applicable, to add additional properties to the Project area should Developer acquire further properties adjacent to the Site and/or Tribal Lands. Such additional properties added to the Project, if acquired by Developer, must be developed in conformance with the Project, subject to all the conditions of development required for the Site (including but not limited to environmental review and City entitlements processing), and shall be a term of negotiation of the Conveyance Instrument. Nothing herein shall require the City to institute any eminent domain action or otherwise declare a resolution of necessity to assist Developer in the acquisition of additional properties.

**D. Environmental Review.** The parties intend to negotiate the terms of the Conveyance Instrument during the term of this Agreement. There are many unknowns concerning the Project at this time, and during the term of this Agreement the Developer will undertake the studies, reports and analysis contemplated in Section 3 to allow it to develop the Project plan, Project designs, traffic analysis, environmental impact analysis and financing plans necessary to determine whether to undertake the Project and/or Overall Development. Environmental analysis will occur when the Project's and/or Overall Development's plans are developed. Developer will have the sole responsibility to pursue and obtain any necessary environmental approvals for the Project and/or the Overall Development pursuant to either CEQA or NEPA, as applicable depending on the outcome of negotiations and coordination of environmental review with the Tribe. As Developer is required to undertake environmental review of the Project and/or Overall Development, it will negotiate with City and Tribe as to which entity shall serve as the lead agency for such review, and Developer shall deposit with the lead agency all funds necessary to cover the cost of such environmental review and shall replenish the deposit as funds are drawn down. City will assist the Developer and/or Tribe (if Tribe is the lead agency) to the fullest extent possible in preparing any environmental documentation that may be necessary for the Project.

**E. Financial Provisions.** Developer shall acquire a leasehold or fee interest in all or a portion of the Site at a price to be agreed upon by the parties with the actual net usable square footage determined through survey and with an offset for remediation costs. The parties further agree to the following, subject to the terms and provisions of the Conveyance Instrument:

1. Developer shall pay rent or a purchase price based upon appraisal information and other negotiated terms and which considers the Use Restriction on the Site, other topographic or regulatory restrictions on the Site, and the project proforma, so that the project is financially feasible.

2. Developer shall be responsible for financing and constructing all on-Site improvements.

3. Developer may be required to pay for all necessary public improvements and all of the City's fees incurred in processing the project, without assistance of City.

4. If the financial provisions of the Conveyance Instrument result in the provision of City assistance to Developer, Developer may be required to pay prevailing wages in accordance with applicable law. Payment of all required prevailing wages in connection with the Project required to be developed by Developer under the Conveyance Instrument will be the sole responsibility of Developer.

**F. Schedule for Development.** During the period of negotiations, a specific schedule for development will be incorporated in the Conveyance Instrument. In general it is contemplated that progress on critical elements of Project negotiation (including FAA and Tribal issues), Project entitlements and Project construction shall occur no sooner than those estimated timeframes shown in Exhibit "B" hereto. The timeframes shown in Exhibit "B" are estimates only, and may be amended by the parties hereto from time-to-time, subject to the requirement that any amendment extending Project timeframes by more than one year shall require City Council approval.

**G. Use and Transfer Restrictions.** The Conveyance Instrument will contain City's standard provisions restricting the use and transfer of the Site. The Conveyance Instrument will restrict the use of the Site for Project only purposes unless the City approves of a different use in writing. Neither this Agreement nor the Conveyance Instrument shall be assigned by Developer without the prior written approval of City, which approval would be based on the experience, expertise and financial capacity of the proposed transferee. The term "assignment" shall not include Developer's involvement of any affiliate of Developer in connection with Developer's activities under this Agreement.

## **SECTION 2. PERIOD OF NEGOTIATIONS**

**A. Period of Exclusive Negotiation.** City and Developer agree to negotiate for two (2) years after the execution date of this Agreement in order to enter into a Conveyance Instrument ("Initial Period"). If upon the expiration of such Initial Period a Conveyance Instrument has not been reached, the City and Developer have the ability to extend their negotiations for a six (6) month period if both parties are in agreement to extend the period of time ("Option Period"). For the City, the six (6) month time extension can be approved by the

City Manager or by the Director of Economic Development in the absence of the City Manager. If the City and Developer have not each approved and executed a Conveyance Instrument, either during the Initial Period or during the Option Period, then this Agreement shall automatically terminate and Developer shall have no further rights regarding the subject matter of this Agreement or the Site, and City shall be free to negotiate with any other person or entity with regard to the Site; provided, however, that City and Developer may mutually agree in writing to further extend the exclusive negotiation period for such additional period as City's Board may approve, as evidenced by a writing signed by both parties.

**B. City Approval.** Developer understands and acknowledges that if negotiations culminate in a Conveyance Instrument, the Conveyance Instrument shall be effective only after, and if, the Conveyance Instrument has been considered and approved by City and City Council after public hearing thereon as required by law. Any Conveyance Instrument would require environmental analysis meeting the requirements of either CEQA or NEPA (as applicable to Tribal Lands).

### **SECTION 3. DEVELOPER'S RESPONSIBILITIES.**

During the period of negotiation, Developer will prepare such studies, reports, and analysis as shall be necessary to permit Developer to determine the feasibility of the Project, subject to any further rights granted Developer with respect to the foregoing. During the period of negotiation, and as requested by City, Developer shall submit to City the following:

**A. Proforma.** An estimated proforma budget for the development and construction of the Project and the estimated return on investment for the City for at least a ten (10) year period after completion of the Project.

**B. Site Plan.** A "Site Plan" specifying the conceptual framework to guide the overall development of the Project, the approved land uses on the Site, including generalized area of building pads, height of structure, total square footage, and parking and proposed circulation system for the Site. In addition, the Developer shall prepare the preliminary design plan of the Project, including building elevations and design themes, as reasonably required by City, sufficient, to the extent feasible and practicable, to allow City to evaluate sign configuration, architectural design and similar issues.

**C. Partners.** Adequate disclosure of Developer's principals, partners, joint ventures, negotiators, consultants, professional employees, or other associates of Developer who are participants or principals of the Project, and other reasonable and relevant information, as requested by City, concerning the above.

**D. Financial Capability.** A statement of Developer's financial capabilities, including contemplated or potential sources of equity and construction and permanent loan financing. City agrees, to the maximum extent permitted by law, to keep confidential all proprietary financial and other information submitted by Developer to City in connection with Developer's satisfaction of its obligations under this Agreement, at all times during the term of this Agreement. Moreover, the parties agree that the financial information which is required to be submitted to City pursuant to this Section shall not be retained by City.

Developer shall negotiate exclusively with City's negotiating team and with no third parties (except the Tribe as provided herein) unless expressly authorized in writing to do so by City's negotiating team. During the period of negotiations, no statements will be made by either Developer or City without first making reasonable efforts to consult with the other party (other than those statements made to each party's agents, consultants and employees and, in the case of Developer, those statements made to prospective tenants or retailers for the Project, if any).

#### **SECTION 4. CITY'S DISCRETION; NON-WAIVER OF POLICE POWERS.**

Developer acknowledges that City is under no obligation to enter into any proposed Conveyance Instrument or other agreement, subject to City's obligations to negotiate in this Agreement, and that any actions taken or investments made by Developer in anticipation of a proposed agreement prior to such agreement being considered and approved by the City Council and signed and delivered, are undertaken at Developer's sole risk and expense. Prior to the execution and delivery of an agreement by City, any reliance by Developer on any representations or promises by City or City staff or consultants, or individual Council or Board members, is undertaken at Developer's sole risk and expense. City acknowledges that Developer is under no obligation to enter into any proposed Conveyance Instrument or other agreement, subject to Developer's obligations to negotiate in this Agreement, and that any actions taken or investments made by City in anticipation of a proposed agreement prior to such agreement being considered and approved by Developer and signed and delivered, are undertaken at City's sole risk and expense. Prior to the execution and delivery of an agreement by Developer, any reliance by City on any representations or promises by Developer or Developer's staff or consultants, is undertaken at City's sole risk and expense.

It is anticipated that the City Council and/or Planning Commission will be required to review and hold hearing(s) upon the Project's necessary entitlements and environmental documentation. The parties understand that City is reserving the right to exercise its discretion as to all matters which City is, by law, entitled or required to exercise, at their discretion; nothing in this Agreement shall be construed as having the effect of waiving or limiting City's police powers and exercise of discretion. To this end:

1. The parties understand that City has the complete and unfettered discretion to reject the Project and/or Conveyance Instrument, and other documents related to the lease or sale of the Site without explanation or cause. The risk of loss of all processing, design and developmental costs incurred by Developer prior to Conveyance Instrument approval and execution shall be absorbed entirely by Developer, unless expressly assumed by the terms of this Agreement by City.

2. The duty of City to execute the Conveyance Instrument shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the City Council is required to make, including all necessary findings and determinations required under CEQA or NEPA as applicable, state and local land use provisions. As to any matter which City may be required to exercise its unfettered discretion in advancing the Project to completion, nothing herein, nor to be contained in the Conveyance Instrument, shall obligate City to exercise its discretion in any particular manner, and any exercise of discretion reserved

hereunder or required by law, shall not be deemed to constitute a breach of City's duties under this Agreement.

3. By its execution of this Agreement, City is not committing itself or agreeing to undertake any activity requiring the subsequent exercise of discretion by City, or any department thereof including, but not limited to, the approval and execution of a Conveyance Instrument, the approval of any development proposal or land use regulation governing the Site, the provision of financial assistance for the development of any public or private interest in real property, or any other such act or approval.

4. This Agreement does not constitute a disposition of property and does not require a public hearing. City execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any proposed Conveyance Instrument and all proceedings and decisions in connection therewith.

#### **SECTION 5. CITY'S RESPONSIBILITIES.**

**A. City Assistance.** City shall cooperate fully in providing Developer with appropriate information and assistance, but such assistance shall not include financial assistance unless specifically provided herein.

**B. Preparation of Agreement.** The Conveyance Instrument shall include, among other relevant terms, the agreements between City and Developer regarding removal of underground storage tanks, grading of the Site, demolition of improvements, the design of the Project, relocation of tenants, street vacation, and other business terms determined necessary or desirable for inclusion in the Conveyance Instrument. City shall provide Developer with an initial draft of the Conveyance Instrument.

If the negotiations culminate in a Conveyance Instrument signed by Developer, such Agreement shall become effective only after and if the Agreement has been considered and approved by the City Council.

#### **SECTION 6. CONVEYANCE INSTRUMENT DEPOSIT.**

If the negotiations contemplated by this Agreement result in the execution of a Conveyance Instrument, subject to the agreement of City and Developer, the Conveyance Instrument will require that Developer submit to City a deposit in the form of a cash deposit, cashier's check or other form of security reasonable acceptable to City to insure that Developer will proceed diligently and in good faith to perform all of Developer's obligations under the Conveyance Instrument ("Conveyance Instrument Deposit"). The amount and terms of the Conveyance Instrument Deposit shall be outlined in the Conveyance Instrument.

#### **SECTION 7. MISCELLANEOUS.**

**A. Brokerage Commissions.** City represents it has engaged no broker, agent, or finder in connection with this transaction, and Developer agrees to hold City harmless from any

claim by any broker, agent, or finder retained by Developer. Subject to the accuracy of City's representation set forth in the preceding sentence, City shall not be liable to pay any real estate commission or any broker's fees which may arise in relation to the Project or the transfer of title to the Site.

**B. Ownership of Documents.** If the negotiations contemplated by this Agreement do not result in the execution of a Conveyance Instrument, Developer shall provide City, at no cost or expense to City, with copies of any third party consultant, contractor, or subcontractor reports, studies, analysis, site plan layouts, engineering studies, memorandums, or similar documents, excluding legally privileged or confidential items or proprietary financial information, regarding the proposed development which were prepared during the period of negotiations, which documents shall become the property of City, on a nonexclusive basis with Developer. Developer shall have no claim for compensation as a result of the exercise by City of its rights of nonexclusive ownership of said documents and materials hereunder. City may not sell such plans or drawings to other parties, and may only use them conceptually for planning purposes. Developer may retain copies of such documents for its own use and shall have an unrestricted right to use such documents, including without limitation all concepts embodied therein.

Such delivery of copies of documents by Developer to City shall be made without any representation, warranty, or liability whatsoever by Developer as to the accuracy or sufficiency of the contents of such documents and shall be made subject to the rights of the preparers of such documents including, without limitation, the copyrights (if any) associated with such documents. City acknowledges that any use of such documents for other projects and/or use of uncompleted documents without specific written authorization by Developer will be at City's or the applicable third party's sole risk and without liability to Developer, and City shall indemnify Developer for all damages concerning, affecting, or relating to City resulting therefrom.

**C. No Personal Liabilities.** Nothing in this Agreement shall create any personal obligation or liability of the City Manager or any City member, staff member, employee, or agent of City for any obligation of City under this Agreement and, conversely, nothing in this Agreement shall create any personal obligation or liability of any partner, member, principal, shareholder, employee, or agent of Developer for any obligation of Developer under this Agreement. All obligations of Developer as set forth herein shall be the joint and several obligations of Developer and any affiliate of Developer involved, at Developer's election, in Developer's activities under this Agreement.

**D. No Conflicts.** Neither the execution or delivery by the City of this Agreement, the performance by the City of its obligations hereunder, nor the fulfillment by the City of the terms and conditions hereof or thereof: (i) conflict with, violates or result in a breach of Applicable Law; or (ii) conflict with, violate or result in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the City is a party or by which the City or any of its properties or assets are bound, or constitute a default thereunder.

**E. Amendment.** This Agreement may only be amended by a document in writing signed by the parties.

**F. Notices.** All notices, including without limitation all approvals and consents, required or permitted under this Agreement shall be delivered in person or by facsimile, by messenger, by overnight mail courier, or by registered or certified mail, postage prepaid, return receipt requested, to each party at its address shown below, or to any other notice address designated in writing by such party:

City: City of the City of Banning  
99 E. Ramsey St.  
Banning, CA 92220  
Attention: City Manager  
Telephone: (951) 922-3171  
Facsimile: (951) 922-3174

Developer: Fairview Holdings, S.A., LLC  
14225 Corporate Way  
Moreno Valley, CA 92553  
Attn: John Ohanian, Director of Development

**G. Default.** Either party may terminate this Agreement if the other party should fail to comply with and perform in a timely manner any material obligation to be performed by such other party under this Agreement, provided the party seeking to terminate this Agreement shall provide ten (10) days written notice to the other party of such failure or nonperformance and such other party shall have such 10-day period within which to cure such failure or nonperformance (or such longer period as may be reasonably necessary to cure such failure or nonperformance if such failure or nonperformance cannot reasonably be cured with such 10-day period). Termination shall be the sole remedy for default. In no event shall either party be liable for monetary damages, attorney fees and costs, or any other cost or expense for the default or termination of this Agreement, and any such right to recover damages is expressly waived. Notwithstanding the foregoing, in no event shall any cure period hereunder extend the term of this Agreement.

**H. Remedies.** In the event of an uncured Default by the City, Developer's sole remedy shall be to terminate this Agreement, upon which Developer shall be entitled to the return of the remaining balance of the Deposit and any interest earned thereon (but City shall have no obligation to earn interest on the Deposit). Following such termination and the return of the balance of the Deposit and any interest earned thereon, neither party shall have any further right, remedy or obligation under this Agreement, except that the Developer's indemnification, hold harmless and assumption of risk obligations pursuant to this Agreement shall survive such termination.

In the event of an uncured Default by Developer, City's sole remedy shall be to terminate this Agreement and to retain the Deposit, and any interest earned thereon. Following such termination, neither Party shall have any right, remedy or obligation under this Agreement, except that the Developer's indemnification, hold harmless and assumption of risk obligations pursuant to this Agreement shall survive such termination.

Except as expressly provided in this Agreement, neither party shall have any liability to the other



for damages or otherwise for any Default, nor shall either Party have any other claims with respect to performance under this Agreement. Each Party specifically waives and releases any such rights or claims it may otherwise have at law to in equity and expressly waives any rights to consequential damages or specific performance from the other Party under this Agreement.

**I. Indemnification.** The Developer shall indemnify, defend, and hold the City and its respective members, officers, staff and agents (collectively, "Indemnitees") harmless from any and all claims, actions, suits and other liability asserted against the City resulting from or in connection with the Developer's execution of this Agreement and/or the Developer's performance under this Agreement. This indemnity shall survive the expiration or termination of this Agreement. In the event that any claim should be filed against any of the Indemnitees which would require indemnification by the Developer, the City shall notify the Developer of such claim in a timely manner to permit the Developer the opportunity to provide adequate representation to the Indemnitees with respect to any such claim. Nothing in this Section shall be construed to mean that Developer shall hold the Indemnitees harmless and/or defend them to the extent of any claims arising from the negligence, willful misconduct or illegal acts of any of the Indemnitees and/or the failure of the Indemnitees to follow any procedure or law applicable to the City.

**J. General Provisions.** This Agreement and all terms and conditions hereof shall be governed by and construed and enforced in accordance with the laws of the State of California. Any term herein can be waived only by a written waiver signed by the party against whom such waiver is to be asserted. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

**K. Recitals.** The Recitals preceding the terms of this Agreement are incorporated into the terms hereof by this reference.

**L. Corporate Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

**"CITY"**  
**CITY OF BANNING**  
a public body, corporate, and politic

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

ATTEST:

\_\_\_\_\_  
Marie Calderon, City Clerk

APPROVED AS TO FORM:  
**ALESHIRE & WYNDER, LLP**

\_\_\_\_\_  
David J. Aleshire, City Attorney

**"DEVELOPER"**  
Fairview Holdings, S.A., LLC

By: \_\_\_\_\_  
Iddo Benzeevi, President & CEO

By: \_\_\_\_\_  
John Ohanian, Director of Development

(ALL SIGNATURES MUST BE NOTARIZED)

On INSERT \_\_\_\_, 2012, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal) \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF RIVERSIDE )

On INSERT \_\_\_\_, 2012, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal) \_\_\_\_\_

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STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

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

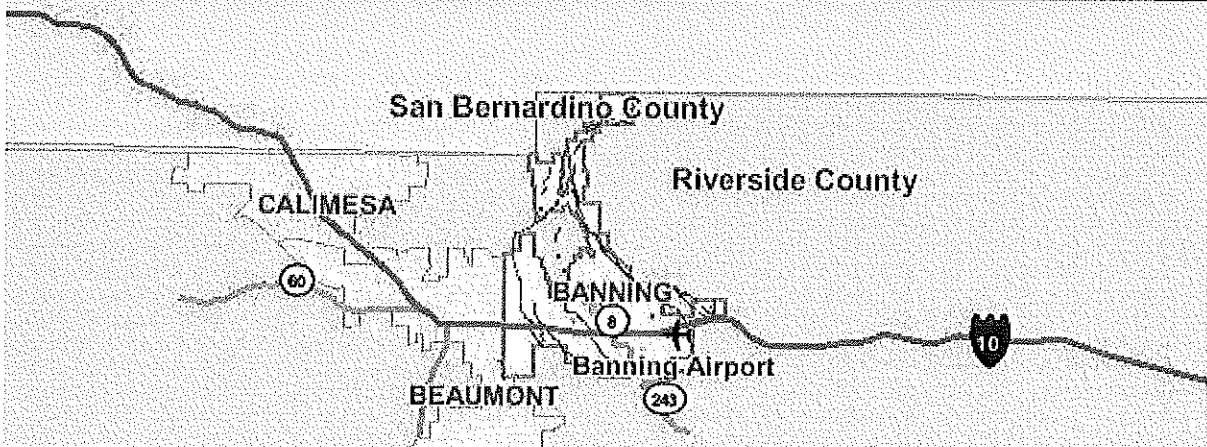
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit "A"  
SITE MAP

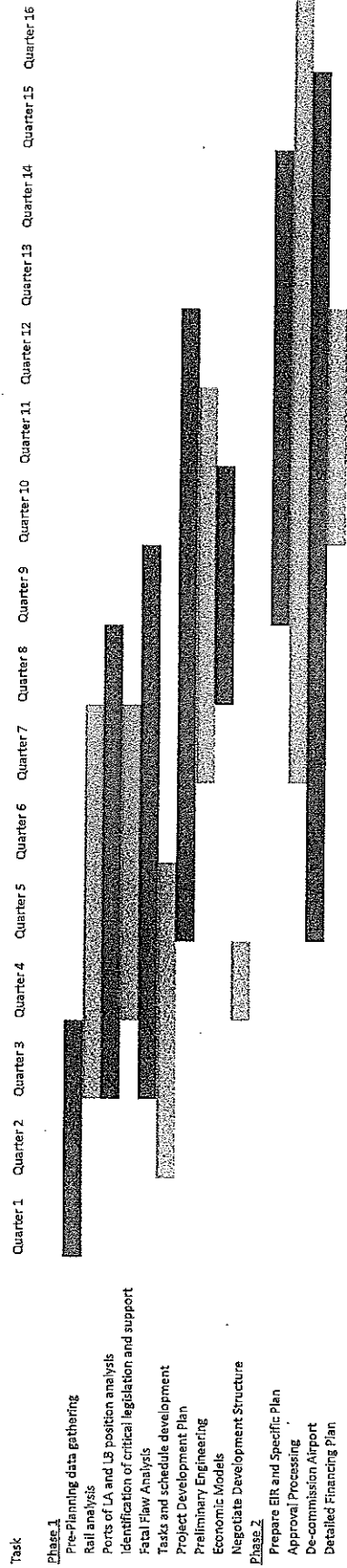
## Project Location and Aerial Photograph



Identification	APN	Acres	General Plan	Zoning
Airport Properties	532-130-012	127.15	Public Facilities	PF-A
Parcel 1	532-130-011	39.10	Industrial	Industrial
Parcel 2	532-130-018	20.00	Industrial	Industrial

Exhibit "B"  
ESTIMATED TIMEFRAME FOR CRITICAL NEGOTIATION AND PROJECT  
TIMEFRAMES

**Banning Airport Project  
Proposed Development Timeline**





**CITY COUNCIL AGENDA  
REPORT OF OFFICERS**

**DATE:** November 13, 2012

**TO:** Mayor and City Council

**FROM:** Andy Takata, City Manager

**SUBJECT:** Resolution No. 2012-89, "Establishing the Intergovernmental Communications and Advocacy Committee"

**RECOMMENDATION:** The City Council adopt Resolution No. 2012-89, "Establishing the Intergovernmental Communications and Advocacy Committee."

**JUSTIFICATION:**

It is essential that we strengthen intergovernmental relationships and manage advocacy efforts on both a State and Federal level. It is envisioned that one of the first tasks of the Intergovernmental Communications and Advocacy Committee would be to continue to work on lobbying efforts and to develop strategies resulting in funding procurement on behalf of the City of Banning.

**BACKGROUND:**

At its regular meeting held on October 23, 2012, the City Council adopted Resolution No. 2012-83, "Approving the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings ("Manual")." The Manual governs the establishment and operation of advisory committees, commissions, other legislative bodies and non-governmental bodies.

The Intergovernmental Communications and Advocacy Committee ("The Committee") shall be composed of two members: the Mayor of the City of Banning, and a second Member of the City Council to be appointed pursuant to Section 6.4(b) of the Manual, as it may be amended in the future. The Committee is not to take the place of the City Council lobbying as a whole but rather to designate those individuals which would lobby in Washington, D.C. and Sacramento during pertinent times in an effort to maximize lobbying efforts.

**The committee shall have the power to act and assist in various ways that include:**

- Act as an evaluation committee in the review and selection of the City's State and Federal Lobbyists through a normal and customary RFQ/RFP process utilized to solicit interested firms. The Committee shall interview top candidates and make recommendations to the City Council and City Manager, or his designee, as to who/what firm(s) would best serve as our State and Federal Lobbyists.

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- Act in an advisory capacity to the City Council and City Manager, or his designee, in all matters pertaining to the matters of federal or state legislative matters pending, or potential legislative actions, that may have material impact upon the City and/or its community.
- Assist the City Council and City Manager, or his designee, in the planning and implementation of intergovernmental communications with federal and state legislative bodies on matters of state/federal legislative concern to the City and its residents, and solicit the cooperation of public and private agencies interested therein.
- Assist and make recommendations to the City Council and City Manager, or his designee, for the implementation of state and/or federal lobbying efforts.
- Consider the annual budget for state and/or federal lobbying efforts to be conducted by the City.

**RECOMMENDED BY:**

A handwritten signature in cursive script that reads "Andy Takata by o.s." followed by a horizontal line.

Andy Takata  
City Manager

**RESOLUTION NO. 2012-89**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA ESTABLISHING THE INTERGOVERNMENTAL  
COMMUNICATIONS AND ADVOCACY COMMITTEE**

**WHEREAS**, the City seeks to establish a committee of the City Council responsible for strengthening intergovernmental relationships and managing advocacy efforts on both a state and federal level; and

**WHEREAS**, on October 23, 2012, this City Council adopted Resolution No. 2012-83 approving the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings ("Manual"); and

**WHEREAS**, said Manual governs the establishment and operation of advisory committees, commissions, other legislative bodies and non-governmental bodies; and

**WHEREAS**, said Manual provides that the Brown Act shall apply to any committee which is (i) established by ordinance, resolution or other formal action, or (ii) has a fixed regular meeting schedule, or (iii) has continuing subject matter jurisdiction over a non-temporary issue, or (iv) which continues to conduct business in excess of 180 days, or (v) has a majority of membership officials from other Legislative Bodies.

**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 are incorporated into the terms of this Resolution by this reference.

SECTION 2. Based on the foregoing recitals, the City Council hereby establishes the INTERGOVERNMENTAL COMMUNICATIONS AND ADVOCACY COMMITTEE ("Committee"), a committee of the City Council.

SECTION 3. The Committee shall be composed of two members: the Mayor of the City of Banning, and a second Member of the City Council to be appointed pursuant to Section 6.4(b) of the Manual, as it may be amended in the future. The Mayor shall serve as a Committee Member for the duration of his or her term as Mayor, unless the Mayor is removed from the Committee as provided for under Section 6.4(b) of the Manual, as it may be amended in the future. The second Committee Member shall continue to serve until that Member is either (i) no longer a Member of the City Council, or (ii) removed from the Committee pursuant to Section 6.4(b) of the Manual, as it may be amended in the future. If the second Committee Member becomes Mayor, the City Council shall appoint a new second Committee Member pursuant to Section 6.4(b) of the manual.

SECTION 4. Members of the Committee shall not be compensated for their service on the Committee.

SECTION 5. The Mayor is authorized to call meetings of the Committee. The Committee shall otherwise not have regular meetings.

SECTION 6. The Committee shall be subject to the provisions of the Brown Act.

SECTION 7. The Committee shall continue until/unless it is abolished pursuant to Section 6.4(b) of the Manual, as may be amended.

SECTION 8. Unexcused absences and vacancies in the Committee shall be resolved pursuant to the terms of the Manual. The Committee shall utilize the Manual for the conduct of its meetings and affairs.

SECTION 9. The Committee shall have the power and duty to:

- i. Act in an advisory capacity to the City Council and City Manager, or his designee, in all matters pertaining to the matters of federal or state legislative matters pending, or potential legislative actions, that may have material impact upon the City and/or its community.
- ii. Assist the City Council and City Manager, or his designee, in the planning and implementation of intergovernmental communications with federal and state legislative bodies on matters of state/federal legislative concern to the City and its residents, and solicit the cooperation of public and private agencies interested therein.
- iii. Assist and make recommendations to the City Council and City Manager, or his designee, for the implementation of state and/or federal lobbying efforts.
- iv. Consider the annual budget for state and/or federal lobbying efforts to be conducted by the City.
- v. Perform such other duties as may be prescribed by the City Council.

SECTION 10. The City Clerk shall certify to the adoption and passage hereof.

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of November, 2012.

---

Don Robinson, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk

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

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-89 was duly adopted by the City Council of the City of Banning, California, at a regular meeting held thereof held on the 13<sup>th</sup> day of November, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning

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

**DATE:** November 13, 2012

**TO:** Banning Utility Authority

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

**SUBJECT:** Banning Utility Authority Resolution No. 2012-13 UA, "Approving the Second Amendment to the Professional Services Agreement with Geoscience Support Services, Inc."

**RECOMMENDATION:** The Banning Utility Authority adopt Resolution 2012-13 UA:

- I. Approving the Second Amendment to the Professional Services Agreement with Geoscience Support Services, Inc. of Claremont, California to include additional services in an amount of \$50,000.00 for a total contract amount "Not to Exceed" \$250,000.00
- II. Authorizing the Administrative Services Director to make an appropriation from the Water Operations Fund to Account No. 660-6300-471.33-11 (Professional Services) in the amount of \$50,000.00.
- III. Authorizing the City Manager to execute the second amendment to the Professional Services Agreement with Geoscience Support Services, Inc.

**JUSTIFICATION:** The second amendment is necessary in order to finalize revisions to the 2010 Urban Water Management Plan as requested by the California Department of Water Resources ("DWR"); finalize the submittal of the Local Groundwater Assistance Grant application; and prepare a Preliminary Design Report ("PDR").

**BACKGROUND:** On December 8, 2009, City Council approved Resolution No. 2009-106, "Awarding a Professional Services Agreement for the Urban Water Management Plan Update for the City's Water Utility to Geoscience Support Services, Inc." in the amount of \$200,000.00.

During the preparation of this plan and in coordination of future development, it was agreed upon by staff and Pardee Homes to collaborate efforts in order to ensure the consistency and accuracy of all related documents. As a result on June 14, 2011, the City Council adopted Banning Utility Authority Resolution No. 2011-08 UA, "Amending the Professional Services Agreement for the 2010 Urban Water Management Plan Update to include Additional Services." Resolution 2011-08 UA authorized the increase of the original purchase order by an amount equal to the funds reimbursed by Pardee Homes for those expenses specifically related to the future development of the Pardee Homes project. To date Pardee Homes has reimbursed the City an amount equal to \$109,220.00.

On July 10, 2012 City Council adopted Utility Authority Resolution No. 2012-09 UA, "Authorizing the Submittal of a Grant Application for a Local Groundwater Assistance Grant to the DWR." The proposed amendment, as requested by this resolution, will include services necessary to prepare additional information requested by the DWR.

In addition, the amendment will include a scope of work necessary for the completion of a PDR for a future production well within the Cabazon Storage Unit. The PDR will include information such as: expected groundwater quality, groundwater levels, potential well production, potential well interference, construction logistics and environmental constraints.

**FISCAL DATA:** The original funding amount for the Professional Services Agreement per Resolution No. 2009-106 was \$200,000.00. An appropriation in the amount of \$50,000.00 from the Water Operations Fund to Account No. 660-6300-471.33-11 (Professional Services) is necessary in order to fund the proposed amendment. The total contract amount is "Not to Exceed" \$250,000.00.

**RECOMMENDED BY:**



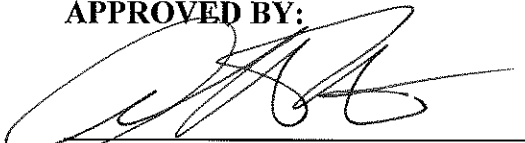
Duane Burk  
Director of Public Works

**REVIEWED BY:**



June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**



Andy Takata  
City Manager

**BANNING UTILITY AUTHORITY RESOLUTION NO. 2012-13 UA**

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH GEOSCIENCE SUPPORT SERVICES**

**WHEREAS**, on December 8, 2009, City Council approved Resolution No. 2009-106, "Awarding a Professional Services Agreement for the Urban Water Management Plan Update for the City's Water Utility to Geoscience Support Services, Inc." in the amount of \$200,000.00; and

**WHEREAS**, during the preparation of the 2010 Urban Water Management Plan and in coordination of future development, it was agreed upon by staff and Pardee Homes to collaborate efforts in order to ensure the consistency and accuracy of all related documents and as a result on June 14, 2011, the City Council adopted Banning Utility Authority Resolution No. 2011-08 UA, "Amending the Professional Services Agreement for the 2010 Urban Water Management Plan Update to include Additional Services"; and

**WHEREAS**, on July 10, 2012 City Council adopted Utility Authority 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"; and

**WHEREAS**, staff request the approval of the second amendment to the professional services agreement with Geoscience Support Services, Inc. in order to provide additional information to the California Department of Water Resources for the completion and acceptance of the 2010 Urban Water Management Plan and the Local Groundwater Assistance Grant as well as for the preparation of a Preliminary Design Report for a future production well within the Cabazon Storage Unit.

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

SECTION 1. Banning Utility Authority adopts Resolution No. 2012-13 UA approving the second amendment to the Professional Services Agreement with Geoscience Support Services, Inc. of Claremont, California.

SECTION 2. The Administrative Services Director is hereby authorized to make an appropriation from the Water Operations Fund to Account No. 660-6300-471.33-11 (Professional Services) in the amount of \$50,000.00, for a total contract amount of "Not to Exceed" \$250,000.00.

SECTION 3. The City Manager is authorized to execute the second amendment to the Professional Services Agreement with Geoscience Support Services, Inc. of Claremont, California. This authorization will be rescinded if the contract agreement is not executed by the parties within sixty (60) days of the date of this resolution.



**PASSED, ADOPTED AND APPROVED** this 13th day November, 2012.

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

**ATTEST:**

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

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

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

**CERTIFICATION:**

I, Marie A. Calderon, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-13 UA was adopted by the Banning Utility Authority of the City of Banning at a Regular Meeting thereof held on the 13th day of November, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**JOINT MEETING  
SUCCESSOR AGENCY AND HOUSING AUTHORITY  
CONSENT ITEM**

**DATE:** November 13, 2012

**TO:** Successor Agency and Housing Authority

**FROM:** Zai Abu Bakar, Community Development Director

**SUBJECT:** CONTRACT SERVICES AGREEMENT WITH RIVERSIDE HOUSING DEVELOPMENT CORPORATION ("RHDC") TO IMPLEMENT THE HOUSING EXTERIOR REHABILITATION PROGRAM

**RECOMMENDATIONS:**

1. That the Successor Agency adopt Resolution No. 2012-14 SA to:
  - a. Approve a contract services agreement with RHDC and authorize the City Manager to execute the contract to implement the Housing Exterior Rehabilitation Program.
  - b. Direct the Administrative Services Director to make the necessary budget adjustments to fund the program for January to June 2013.
2. That the Housing Authority adopt Resolution No. 2012-05 HA to:
  - a. Approve a contract services agreement with RHDC and authorize the City Manager to execute the contract to implement the Housing Exterior Rehabilitation Program.
  - b. Direct the Administrative Services Director to make the necessary budget adjustments to fund the program for January to June 2013.

**BACKGROUND:**

RHDC has been implementing the City's housing program that includes the Housing Exterior Rehabilitation and First Time Home Buyers Program since Fiscal Year 2010-2011. The Housing Exterior Rehabilitation Program is a popular program because it helps improve the aesthetics of neighborhoods in the City.

The City has historically funded the Housing Exterior Rehabilitation Program using the funds set aside from the 2003 Tax Allocation Bond proceeds and the 20% funds set aside from the Redevelopment Agency tax increment. The tax increment financing has been redirected by Governor Brown to backfill the State budget deficit as a result of redevelopment agency elimination. The remaining funding source that is available to fund the Housing Exterior Rehabilitation is through the funds set aside from the 2003 Bond proceeds as authorized under AB 1484 which was approved by the Governor on June 27, 2012.

As part AB 1X 26 and AB 1484, the City is required to submit a Recognized Obligation Payment Schedule (ROPS) for approval by the State of California Department of Finance to fund the Housing Exterior Rehabilitation Program. The Housing Exterior Rehabilitation Program was included in ROPS III and was approved by the State Department of Finance on October 12, 2012. The Program is to be implemented between January and June 2013. The number of

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single-family homes to be rehabilitated is 12 units. The total cost of the program is \$141,000.00. The funding allocated per home is \$10,000.00 for a total of \$120,000.00. The RHDC administrative fee to implement the program is \$21,000.00.

**FISCAL DATA:**

The total cost to rehabilitate twelve (12) homes including administrative fees to implement the program is \$141,000.00 which will be funded by the 2003 Bond Proceeds. Additionally, this program was approved by the State Department of Finance on ROPS III. As part of the resolution, staff is requesting that the Successor Agency and Housing Authority authorize the Administrative Services Director to make the necessary budget adjustments to fund this program.


**APPROVED BY:**

  
\_\_\_\_\_  
Andrew J. Takata  
City Manager

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Zak Abu Bakar  
Community Development Director

**REVIEWED BY:**

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

**Attachments:**

1. Resolution No. 2012-14 SA
2. Resolution No. 2012-05HA
3. RHDC Contract Services Agreement

**RESOLUTION NO. 2012-14 SA**

**A RESOLUTION OF THE SUCCESSOR AGENCY, BANNING, CALIFORNIA, APPROVING A CONTRACT SERVICES AGREEMENT WITH RIVERSIDE HOUSING DEVELOPMENT CORPORATION (RHDC) TO IMPLEMENT THE HOUSING EXTERIOR REHABILITATION PROGRAM FOR THE PERIOD OF JANUARY THROUGH JUNE OF 2013**

**WHEREAS**, the Successor Agency desires to implement the Housing Exterior Rehabilitation Program that provides assistance to low and moderate income residents who qualify to improve the aesthetics and livability of neighborhoods in the City of Banning; and

**WHEREAS**, AB 1484 allows the Successor Agency to use the bond proceeds to implement its Housing Exterior Rehabilitation Program; and

**WHEREAS**, the Housing Exterior Rehabilitation Program will be funded through the housing set aside funds from the 2003 Tax Allocation Bond Proceeds; and

**WHEREAS**, the State of California Department of Finance has approved the Program in Recognized Obligation Payment Schedule (ROPS) III.

**NOW, THEREFORE, BE IT RESOLVED** that the Successor Agency desires to contract with RHDC to implement the Housing Exterior Rehabilitation Program.

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

SECTION 2. Approved Agreement. The Successor Agency hereby approves the agreement between the City and RHDC and directs the City Manager to execute the contract.

SECTION 3. Budget Adjustment. The Successor Agency hereby directs the Administrative Services Director to make the necessary budget adjustments in the amount of \$141,000.00 to implement the Program for the period of January to June 2013.

PASSED, APPROVED AND ADOPTED this November 13, 2012.

---

Don Robinson, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT:

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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. 2012-14 SA was duly adopted by the Successor Agency of the City of Banning at a regular meeting thereof held on the 13th day of November, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**RESOLUTION NO. 2012-05 HA**

**A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING A CONTRACT SERVICES AGREEMENT WITH RIVERSIDE HOUSING DEVELOPMENT CORPORATION (RHDC) TO IMPLEMENT THE HOUSING EXTERIOR REHABILITATION PROGRAM FOR THE PERIOD OF JANUARY THROUGH JUNE OF 2013**

**WHEREAS**, the Housing Authority desires to implement the Housing Exterior Rehabilitation Program that provides assistance to low and moderate income residents who qualify to improve the aesthetics and livability of neighborhoods in the City of Banning; and

**WHEREAS**, AB 1484 allows the Housing Authority to use the bond proceeds to implement its Housing Exterior Rehabilitation Program; and

**WHEREAS**, the Housing Exterior Rehabilitation Program will be funded through the housing set aside funds from the 2003 Tax Allocation Bond Proceeds; and

**WHEREAS**, the State of California Department of Finance has approved the Program in Recognized Obligation Payment Schedule (ROPS) III.

**NOW, THEREFORE, BE IT RESOLVED** that the Housing Authority desires to contract with RHDC to implement the Housing Exterior Rehabilitation Program.

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

SECTION 2. Approved Agreement. The Housing Authority hereby approves the agreement between the City and RHDC and directs the City Manager to execute the contract.

SECTION 3. Budget Adjustment. The Housing Authority hereby directs the Administrative Services Director to make the necessary budget adjustments in the amount of \$141,000.00 to implement the Program for the period of January to June 2013.

PASSED, APPROVED AND ADOPTED this November 13, 2012.

---

Don Robinson, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT:

---

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

ATTEST:

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-05 HA was duly adopted by the Housing Authority of the City of Banning at a regular meeting thereof held on the 13th day of November, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

# **CONTRACT SERVICES AGREEMENT**

**By and Between**

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

**and**

**Riverside Housing Development Corporation, a California  
Corporation**



**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
RIVERSIDE HOUSING DEVELOPMENT CORPORATION**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 13<sup>th</sup> day of November, 2012 by and between the City of Banning, a municipal corporation ("City") and Riverside Housing Development Corporation, a California Corporation ("Consultant" or "Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties." (The term Contractor includes professionals performing in a consulting capacity.)

**RECITALS**

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

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

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

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

**OPERATIVE PROVISIONS**

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

**ARTICLE 1. SERVICES OF CONTRACTOR**

**1.1 Scope of Services.**

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

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

#### 1.2 Contractor's Proposal.

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

#### 1.3 Compliance with Law.

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

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

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

#### 1.5 Familiarity with Work.

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

#### 1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be

responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty.

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

1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for

each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

#### 1.9 Further Responsibilities of Parties.

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

#### 1.10 Additional Services.

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

#### 1.11 Special Requirements.

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

### **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

#### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \$141,000.00 (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

## 2.2 Method of Compensation.

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

## 2.3 Reimbursable Expenses.

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

## 2.4 Invoices.

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

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

## 2.5 Waiver.

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

# ARTICLE 3. PERFORMANCE SCHEDULE

## 3.1 Time of Essence.

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

### 3.2 Schedule of Performance.

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

### 3.3 Force Majeure.

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

### 3.4 Inspection and Final Acceptance.

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

### 3.5 Term.

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

## ARTICLE 4. COORDINATION OF WORK

### 4.1 Representatives and Personnel of Contractor.

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

<u>Bruce Kulpa</u>	<u>Executive Director</u>
(Name)	(Title)

_____	_____
(Name)	(Title)

_____	_____
(Name)	(Title)

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

### 4.2 Status of Contractor.

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

#### 4.3 Contract Officer.

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

#### 4.4 Independent Contractor.

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

#### 4.5 Prohibition Against Subcontracting or Assignment.

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

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

#### 5.1 Insurance Coverages.

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



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

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

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

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

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

## 5.2 General Insurance Requirements.

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

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

CANCELLATION:

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

[to be initialed]

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

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

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

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

5.3 Indemnification.

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

entity for which Contractor is legally liable ("indemnors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

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

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

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

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

#### 5.4 Performance Bond.

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

### 5.5 Sufficiency of Insurer or Surety.

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

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

### 6.1 Records.

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

### 6.2 Reports.

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

### 6.3 Ownership of Documents.

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

### 6.4 Confidentiality and Release of Information.

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

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

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

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

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## ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

### 7.1 California Law.

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

### 7.2 Disputes; Default.

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

### 7.3 Retention of Funds.

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

### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any

right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

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

7.6 Legal Action.

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

7.7 Liquidated Damages.

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

7.8 Termination Prior to Expiration of Term.

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

#### 7.9 Termination for Default of Contractor.

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

#### 7.10 Attorneys' Fees.

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

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

#### 8.1 Non-liability of City Officers and Employees.

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

#### 8.2 Conflict of Interest.

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

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



### 8.3 Covenant Against Discrimination.

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

### 8.4 Unauthorized Aliens.

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

## ARTICLE 9. MISCELLANEOUS PROVISIONS

### 9.1 Notices.

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

### 9.2 Interpretation.

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

### 9.3 Counterparts.

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

### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels

any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

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

9.6 Corporate Authority.

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**CITY:**

CITY OF BANNING, a municipal corporation

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

ATTEST:

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

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

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

**CONTRACTOR:**

RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION

By:   
Name: Bruce Kulpa  
Title: Executive Director

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

Address: 3985 University Avenue,  
Riverside, CA 92501

Two signatures are required if a corporation.

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

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## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

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

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

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

WITNESS my hand and official seal.

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

### OPTIONAL

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

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	
TITLE(S)	
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/> GUARDIAN/CONSERVATOR	
<input type="checkbox"/> OTHER _____	
_____	
<b>SIGNER IS REPRESENTING:</b>	_____
(NAME OF PERSON(S) OR ENTITY(IES))	SIGNER(S) OTHER THAN NAMED ABOVE
_____	
_____	

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

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

A. Twelve (12) Housing Exterior Rehabilitation Program for single-family homes in the City of Banning for low-moderate income residents. The component of the services include the following tasks.

1. Respond to resident inquiries and initial information sharing, application intake and pre-qualification
2. Work with qualified residents on application education and assistance
3. Review and perform credit checks and underwriting functions
4. Coordinate with owners, private lenders and brokers
5. Create an approved list of qualified contractors.
6. Review and final scope of work submitted by applicants
7. Solicit bids and award contracts based on the approved scope of work.
8. Perform site inspections for construction and improvement of the properties funded by the grant.
9. Final the project and prepare/approve certificate of completion.
10. Prepare project close-out report
11. Record covenants and/or regulatory agreements with the County of Riverside
12. File maintenance, monthly, and quarterly reporting
13. Manage the program and cost control for each of the construction project.

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

- A. Complete files that are organized in a consistent manner for each applications/grants approved from application filing to project close-out.
- B. Monthly and final summary reports of agreements approved and denied and status of construction.
- B. Signed agreements and recorded maintenance agreement covenants for the grants.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City appraised of the status of performance by delivering the following status reports:**

A. Monthly Reports of Applicants/Projects Funded, Projects Not-Funded.

B. Final report summary of project completed, including names of applicants, addresses of the project, application filing dates; dates funded, amount funded, date agreement was approved; completing of training courses for homeownership and maintenance, dates the projects were completed; income level and household size.

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

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

A. Employees of the Riverside Housing Development Corporation who is familiar with the City of Banning Housing Exterior Rehabilitation Program.

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

- The City shall at no charge to Contractor provide access to a suitable work station, desk, or cubicle, within City Hall, for Contractor staff to utilize for meetings with program clients and to operate the program during normal business hours.



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

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

	<b>RATE</b>	<b>TIME</b>	<b>SUB-BUDGET</b>
<b>A. Task A</b>			
1. Program Administration Fee	\$2,300.00	6 months	\$13,800.00
2. Per Unit Fee of Agreement signed and Homes Rehabilitated	\$600.00/project	-	\$7,200.00
3. Grants to Qualified Homeowners	\$10,000.00/unit	-	\$120,000.00
<b>TOTAL BUDGET</b>			<b>\$141,000.00</b>

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

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

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

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.**
- B. Line items for all other approved reimbursable expenses claimed, with supporting documentation.**

- C. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- V. **The total compensation for the Services shall not exceed \$141,000.00, as provided in Section 2.1 of this Agreement.**
- VI. **The Contractor's billing rates for all personnel shall be as indicated on this Exhibit C, Items I.A.1 & 2.**

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

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

	<u>Days to Perform</u>	<u>Deadline Date</u>
A. Task A	180 days	June 30, 2013

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

- A. Monthly reports within 7 days after the end of the preceding months.
- B. Final Reports within 15 days after completion of the program and no later than June 30, 2013

- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

**JOINT MEETING  
SUCCESSOR AGENCY AND HOUSING AUTHORITY  
REPORT OF OFFICERS**

**DATE:** November 13, 2012

**TO:** Successor Agency

**FROM:** Zai Abu Bakar, Community Development Director

**SUBJECT:** Ramsey Villa, LLC (225 W. Ramsey Street) – Extension of Time to Complete Leasing of the Apartments and Retail/Restaurant Space

**RECOMMENDATION:**

1. That the Successor Agency adopt Resolution No. 2012-15 SA approving an extension of time to complete the leasing of the apartments and the commercial tenant space at Ramsey Villa, LLC based on the specified schedule as shown in the Second Amendment to the Agreement.
2. That the Housing Authority adopt Resolution No. 2012-06 HA approving an extension of time to complete the leasing of the apartments and the commercial tenant space at Ramsey Villa, LLC based on the specified schedule as shown in the Second Amendment to the Agreement.

**BACKGROUND:** The Redevelopment Agency entered into a Façade Agreement with Ramsey Villa, LLC on March 21, 2011 in the amount of \$230,000.00. The funds were allocated for façade and interior improvements including the purchase of windows; exterior doors; roofing materials; paint, fencing and gates; exterior signage for the building; an electrical box to hold the new electrical meters for each of the apartment units; and resurfacing of the parking lot. On December 13, 2011, the Community Redevelopment Agency amended the agreement to allow the developer to complete the apartments by March of 2012, as well as, complete leasing of the commercial space by December 13, 2012.

Ramsey Villa, formally known as Hotel Banning, was built in the 1920s. Due to unforeseen circumstances such as the structural conditions of the buildings, theft of copper wires, break-ins into the building, and the need for an electrical upgrade of the building, the completion of the construction is taking longer than projected. Furthermore, as a result of the economic recession, the ability to lease vacant residential and commercial properties has become more challenging than originally expected. Consequently, the developer has requested an extension of time to complete the project. Currently, the developer is nearing completion of construction and is in the final stage of obtaining the State to perform an inspection on the project's elevator. Additionally, the developer is working with the City in order to obtain final approval on the building and electrical improvements for issuance of a Certificate of Occupancy.

The developer assured staff that the apartments and the commercial space could be leased based on the following timelines:

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A. Lease the apartment units based on the following timelines:

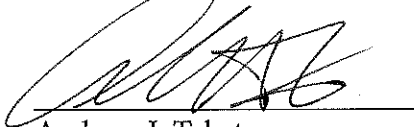
1. 80% of the 22 units shall be leased by March 31, 2013.
2. 100% of the total units shall be leased by June 30, 2013.

B. Lease the restaurant/retail space based on the following timelines:

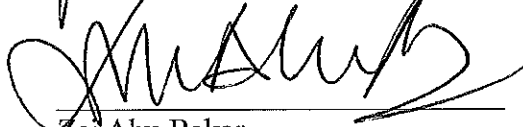
1. Obtain a signed lease agreement with a restaurant owner or retail tenant by September 30, 2013.
2. Complete the kitchen renovation within 90 days from signing of the lease with a restaurant or retail tenant or by December 31, 2013.

Staff recommends that the Successor Agency and the Housing Authority approve the Second Amendment to the original agreement. If approved, additional authorization from the Oversight Board and the State Department of Finance will be necessary.


**RECOMMENDED BY:**

  
Andrew J. Takata  
Executive Director


**PREPARED BY:**

  
Zai Abu Bakar  
Community Development Director

**REVIEWED BY:**

  
Bill Manis  
Economic Development Director

**REVIEWED BY:**

  
June Overholt  
Deputy City Manager/  
Administrative Services Director

Attachment:

1. Resolution No. 2012-15 SA
2. Resolution No. 2012-06 HA
3. Second Amendment to the Façade Improvement Agreement for Ramsey Villa

**RESOLUTION NO. 2012-15 SA**

**A RESOLUTION OF THE SUCCESSOR AGENCY OF THE CITY OF BANNING  
APPROVING AN EXTENSION OF TIME TO COMPLETE THE LEASING OF  
THE APARTMENT UNITS AND COMMERCIAL SPACE WITHIN RAMSEY  
VILLA LOCATED AT 225 W. RASMEY STREET**

**WHEREAS**, the Banning Community Redevelopment Agency entered into a Façade Improvement Agreement with Ramsey Villa LLC on March 21, 2011 in the amount of \$230,000.00; and

**WHEREAS**, on December 13, 2011 the Community Redevelopment Agency entered into a First Amendment to the original agreement; and

**WHEREAS**, the Banning Community Redevelopment Agency along with other redevelopment agencies in the State of California was eliminated per AB 1X 26 and is replaced with the Successor Agency to oversee the activities of the former redevelopment agency; and

**WHEREAS**, the developer Fred Lawson/Ramsey Villa LLC has requested approval of a Second Amendment to the Façade Improvement Agreement and has agreed to a schedule of timelines to lease the apartments and the commercial space; and

**WHEREAS**, the Successor Agency recognizes that due to structural conditions of the building, theft of copper wires, break-ins into the building, and the need for an electrical upgrade for the building, the completion of the construction is taking longer than normal. Additionally, the economic recession which affected all sectors of the local, state, and national economy has slowdown the ability to lease vacant residential and commercial building locally.

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

1. Recitals. The foregoing Recitals are acknowledged by the Parties as true and correct and are hereby incorporated into the terms of this Amendment by this reference.
2. Approval of Time Lines for Leasing of the Apartment and Commercial Space. The Successor Agency hereby approves the Second Amendment to the Original agreement as referenced herein.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of November 2012.

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

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

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

**ATTEST:**

\_\_\_\_\_  
Marie Calderon, City Clerk

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-15 SA was duly adopted by the Successor Agency of the City of Banning at a regular meeting thereof held on the 13th day of November, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**RESOLUTION NO. 2012-06 HA**

**A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF  
BANNING APPROVING AN EXTENSION OF TIME TO COMPLETE THE  
LEASING OF THE APARTMENT UNITS AND COMMERCIAL SPACE  
WITHIN RAMSEY VILLA LOCATED AT 225 W. RASMEY STREET**

**WHEREAS**, the Banning Community Redevelopment Agency entered into a Façade Improvement Agreement with Ramsey Villa LLC on March 21, 2011 in the amount of \$230,000.00; and

**WHEREAS**, on December 13, 2011 the Community Redevelopment Agency entered into a First Amendment to the original agreement; and

**WHEREAS**, the Banning Community Redevelopment Agency along with other redevelopment agencies in the State of California was eliminated per AB 1X 26 and is replaced with the Housing Authority to oversee the activities of the former redevelopment agency; and

**WHEREAS**, the developer Fred Lawson/Ramsey Villa LLC has requested approval of a Second Amendment to the Façade Improvement Agreement and has agreed to a schedule of timelines to lease the apartments and the commercial space; and

**WHEREAS**, the Housing Authority recognizes that due to structural conditions of the building, theft of copper wires, break-ins into the building, and the need for an electrical upgrade for the building, the completion of the construction is taking longer than normal. Additionally, the economic recession which affected all sectors of the local, state, and national economy has slowdown the ability to lease vacant residential and commercial building locally.

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

1. Recitals. The foregoing Recitals are acknowledged by the Parties as true and correct and are hereby incorporated into the terms of this Amendment by this reference.
2. Approval of Time Lines for Leasing of the Apartment and Commercial Space. The Housing Authority hereby approves the Second Amendment to the Original agreement as referenced herein.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of November 2012.

---

Don Robinson, Chairman  
City of Banning



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

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

**ATTEST:**

\_\_\_\_\_  
Marie Calderon, City Clerk

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-06 HA was duly adopted by the Housing Authority of the City of Banning at a regular meeting thereof held on the 13th day of November, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**SECOND AMENDMENT TO FAÇADE IMPROVEMENT AGREEMENT**  
225 W. RAMSEY STREET, BANNING, CALIFORNIA

THIS SECOND AMENDMENT TO FAÇADE IMPROVEMENT AGREEMENT ("**Second Amendment**") is made and entered into this 13<sup>th</sup> day of November, 2012, by the SUCCESSOR AGENCY OF THE CITY OF BANNING and the HOUSING AUTHORITY ("**Agency**"), a public body, corporate and politic and Ramsey Villa LLC/Fred Lawson ("**Owner**"). Owner and Agency are occasionally herein referred to individually as a "party" and collectively as the "parties".

**RECITALS**

- A. On March 21, 2011, the parties entered into that certain Façade Improvement Agreement (the "**Original Agreement**") by which the Agency provided financial assistance in the amount of \$230,000.00 for a Façade Improvement on property located at 225 W. Ramsey Street more particularly depicted in Exhibit "A" to this Agreement.
- B. On December 13, 2011, the Community Redevelopment Agency approved a first amendment to the Original Agreement to allow the developer time to complete renovation of the apartments and the parking lot and lease the apartment units once the City issued a certificate of occupancy and lease the commercial space to a restaurant or a retail tenant by December 13, 2012 (the "First Amendment").
- C. WHEREAS, the Banning Community Redevelopment Agency, along with other redevelopment agencies in the State of California, was eliminated per AB 1X 26 and is replaced with the Successor Agency and/or Housing Authority to oversee the activities of the former redevelopment agency. The Successor Agency's approval of this Second Amendment shall be subject to Oversight Board approval and review by the State Department of Finance per AB 1X26.
- D. WHEREAS, the developer Fred Lawson/Ramsey Villa LLC has requested approval of a second amendment to the Façade Improvement Agreement and has agreed to a certain timelines to lease the apartments and the commercial space.

**NOW, THEREFORE**, the parties agree that the Agreement shall be revised pursuant to the following terms of this Amendment:

- 1. Recitals. The foregoing Recitals are acknowledged by the parties as true and correct and are hereby incorporated into the terms of this Amendment by this reference.
- 2. Completion Date. Section 3 of the First Amendment is repealed in its entirety to be replaced with the amendment made in this Section of this Second Amendment. Section 1.8 of the Original Agreement, is hereby amended to read in its entirety as follows:

“1.8 Completion Date. The Owner shall use its best efforts to:

a. Lease the apartment units based on the following timelines:

- i. 80% of the 22 units shall be leased by March 31, 2013.
- ii. 100% of the total units shall be leased by June 30, 2013.

b. Have the restaurant/retail space lease and completed based on the following timelines:

- i. Having a signed lease agreement with a restaurant owner or retail tenant by September 30, 2013.
- ii. Complete the kitchen renovation within 90 days of signing the lease with a restaurant or retail tenant or by December 31, 2013.

Subsequent extension may be granted by the Executive Director upon showing that there are extenuating circumstances or good cause that requires an extension of time to complete leasing of the apartments and the commercial space. The Regulatory Agreement shall remain in effect for the term thereof. However, it is understood, acknowledged, and agreed by the Owner that the Agency's recordation of the Regulatory Agreement shall not in any way satisfy or supersede a requirement that the Owner obtain a certificate of Occupancy, or any other permit or approval required by the City, Agency, or other governmental entity having jurisdiction for occupancy and operation of the Project or any phase thereof.”

3. Remaining Provisions of the Original Agreement. Except as expressly provided in this Second Amendment, all other provisions of the Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, Agency and Owner have entered into this Second Amendment as of the date set forth above.

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

Don Robinson, Mayor

\_\_\_\_\_  
Barbara Hanna, Housing Authority Chairperson

ATTEST:

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

APPROVED AS TO FORM:  
ALESHIRE AND WYNDER, LLP

By: \_\_\_\_\_  
Lona N. Laymon, Asst. City Attorney

“Owner”

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

Name: \_\_\_\_\_