

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

February 12, 2013
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

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

- . Pledge of Allegiance
- . Invocation –
- . Roll Call - Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE

PUBLIC COMMENTS – *On Items Not on the Agenda*

A three-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. 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 for future study, research, and appropriate Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

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

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

IV. **CONSENT ITEMS**

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

Motion: That the City Council approve Consent Item 1 through 11

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 (Closed Session) – 01/22/13	1
2.	Approval of Minutes – Regular Meeting – 01/22/13	3
3.	Approval of Accounts Payable and Payroll Warrants for the Month of December 2012	11
4.	City Business Permit for Symons Emergency Specialties.	14
5.	Resolution No. 2013-10, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2013/2014.	15
6.	Resolution No. 2013-14, Authorizing the City Manager or His Designee to Execute For and On Behalf of the City of Banning Any Actions Necessary for the Purpose of Obtaining Financial Assistance Provided by the Governor’s Office of Homeland Security and Authorizing the Administrative Services Director to Make Any Necessary Budget Adjustments Upon Receiving Such Funds	21
7.	Resolution No. 2013-15, Approving a Professional Services Agreement with Albert A. Webb Associates for the Design of Street Improvements On Westward Avenue.	25
8.	Adopt Resolution No. 2013-16, Approving the Project Development Cooperative Agreement with the State of California, Department of Transportation (Caltrans), for the Grade Separation and Ramps Modifications at Sunset Avenue.	30
9.	Resolution No. 2013-19, Approving a Professional Services Agreement with Albert A. Webb Associates for Engineering and Design Services for the Modification and Expansion of the City Corporate Yard.	63
10.	Stagecoach Days In-Kind Services Report.	74
11.	Dill Lumber Co. v. City of Banning, et al (Riverside County Superior Court Case No. RIC 1100544)	77

- Open for Public Comments
- Make Motion

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

V. CONSENT ITEMS

Motion: That the Banning Utility Authority approve Consent Item 1 and 2

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

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

1.	Resolution No. 2013-03 UA, Approving the Amendment to the Professional Services Agreement with Stephen P. Stockton, P.E.	87
2.	Resolution No. 2013-04 UA, Authorizing Investment of Monies in the Local Agency Investment Fund	91

- Open for Public Comments
- Make Motion

Recess joint meeting of Banning City Council and Banning Utility Authority and reconvene the regular City Council Meeting.

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

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

VII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials

VIII. ADJOURNMENT

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

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. 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. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

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

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

01/22/13
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 Franklin on January 22, 2013 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts
Councilmember Miller
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew J. Takata, City Manager
June Overholt, Administrative Services Director
David J. Aleshire, City Attorney
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney announced that the City Council would meet in closed session to discuss once matter of potential litigation pursuant to the provisions of Government Code Section 54956.9; one matter regarding real property negotiations concerning the Banning Airport and adjacent properties (APN: 532-130-012, 532-130-011, 532-130-018) pursuant to Government Code Section 54956.8; and labor negotiations involving the various bargaining units pursuant to the provisions of Government Code Section 54957.6.

City Attorney that there is a need to add two additional items: 1) real property negotiations concerning the property at 2301 W. Ramsey; and 2) a litigation matter concerning the property at 220 Ramsey Street (Banning v. Huang). These items occurred also after the posting.

Motion Botts/Welch to add these two items to the agenda. Motion carried, all in favor.

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

Meeting went into closed session at 4:04 p.m. and returned to open session at 4:55 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:55 p.m.

Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

01/22/13
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Franklin on January 22, 2013 at 5:10 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts
Councilmember Miller
Councilmember Peterson
Councilmember Welch
Mayor Franklin

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
Heidi Meraz, Community Services Director
Bill Manis, Economic Development Director
Fred Mason, Public Utility Director
Marie A. Calderon, City Clerk

The invocation was given by Steve Bierly, Church of Nazarene. Councilmember Welch led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney stated that the City Council met in closed session to discuss one matter of potential litigation and a status report was given and there was no reportable action taken. There was a matter regarding real property negotiations concerning the Banning Airport and adjacent properties and that matter was not discussed. In regards to labor negotiations a status report was given and there was no reportable action taken. The Council added two items to the closed session agenda and one matter concerning 2301 W. Ramsey was not discussed. The second item added was a litigation matter involving the property at 220 W. Ramsey Street and a status report was given on settlement negotiations and the Council gave direction for further negotiations but there was no reportable action taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Barbara Hanna, 4678 W. Hoffer Street, address the Council regarding the Centennial. She said that things are going so well and they have so much participation by the community and many different partners that are helping to spread the word about all of the events and the projects going on for the Centennial. She mentioned that business size cards that they have which have their website address on it and they have given away 2000 of them so far and appreciate people taking some with them and spreading the word about the Centennial. They also have a Facebook page "Banning100Birthday" and you can receive updates about what is going on. They have a second Facebook for the Centennial and have a spokes dog named "Domino" and he is associated with a fellow who does maintenance of for the Banning Cultural Alliance. What they are doing with these two Facebook pages, especially "DominoBanning" is particularly anything in that is a positive opportunity for children and for "Banning100Birthday" that is anything that is positive about the community that people would want to know about. The first major event is the City event to be held on Feb. 6th celebrating our incorporation and it is open to the public starting at 5:00 p.m. Also the first opening lecture/dinner will be held on Feb. 9th and Dr. Patty Nelson Limerick will be giving a lecture on "Beginning with Banning from Conquest to Civil Rights; from Stagecoaches to VW Bugs; from the Old West to New Western History". She graduated from Banning High School in 1968. Because this is a dinner the tickets are \$25.00 and subsequent lectures will only be \$5.00. The second lecture is by an author of a book called "Grand Ventures" which is all about Phineas Banning and will be held March 9th at 7 p.m. and the lectures will be held at the Dorothy Ramon Learning Center Gathering Hall.

Charlene Sakurai, 4985 Bermuda Dunes announced the upcoming 6th Annual Go Red for Women Luncheon to be held on Feb. 9th from 11:30 a.m. to 1:30 p.m. at the Banning Woman's Club, 175 W. Hays Street. The cost is \$15.00 and includes a heart healthy lunch, speaker and door prizes. The speaker will be Ludwig Cibelli, Medical Director of the Emergency Dept. at San Gorgonio Memorial Hospital. They have 20 seats left and reservations close Feb. 5th and you can call 922-4911.

Marva Biggers, 4133 W. Wilson, addressed the Council stating that she was here because of a dark side of Banning. She is here because of her nephews and more importantly their future. She stated that if the Council has not spoken with the police department regarding the crime that happened in 2011, she would encourage them to because being part of this community and working for one of the new businesses here; new business brings new people and brings revenue to everyone and that is how cities grow but you have children here that graduate from school and leave because there is not a future so I encourage show the world, show Riverside County, show the citizens here that we have less crime. Because you will keep the people here and they will have their kids grow up here because they feel safe. Cities with that type of history and reputation encourage young people to stay. We live in a community next to one that perhaps the news reports that they have they have an excellent school system; so does Banning. You might hear about a city across the hills going towards Moreno Valley that they have excellent community service items; we have excellent things going on. She would encourage you that if you have not yet, you need to stop off and start getting involved with the new businesses and show your face and tell them that you are glad they are here but you also need to stop off with those that serve us and serve us all the time day and night because they

don't have weekends off and ask them what you can do to help this town prosper just like our logo says "Proud History/Prosperous Tomorrow".

CORRESPONDENCE: There was none.

PRESENTATIONS:

1. Banning High School Solar Boat Team Presentation

Fred Mason, Electric Utility Director stated that Banning Electric is one of the sponsors for the Banning High School Solar Boat Teams and have been doing this for about five years and each year they come and give an update as to how they did. He turned the meeting over to Larry Ellis who is the Team's advisor.

Larry Ellis said that Mark Kline is the teacher/advisor for the Team and as each of the students introduce themselves.

Alana Sanchez-Park, Carlos Sanchez, and Sarah Brock members of the H20 Solar Boat Racing Team introduced themselves and gave information on the different steps that were taken in building the boat and the actual race itself. The event was held on May 18th through May 20th at Yucaipa Regional Park. At this time the students started their power-point presentation going over the various steps taken to ready themselves for the challenge. This challenge is a competition for all the high schools located in the Inland Empire and they have to build a 16 foot boat from scratch that they end up racing and this program was started to give high school students a hands-on experience so they can take what they learn in the classroom and use it out in the real world. The event focuses on science and math, water conservation, team building, electrical and mechanical engineering and also problem solving. There were three events: 1) 90 Minute Endurance Race; 2) Slalom Race; and 3) Sprint Race and there is also a water conservation presentation and three technical reports. They took second place in the Slalom Race and took first place in the Sprint Race. They thanked Mr. Kline and Mr. Ellis for their help and all the members of the Boat Racing Team. They thanked the City of Banning and Banning Electric for sponsoring the team so that they could be in the race because without the City's help, along with other sponsors, they could not afford to participate in the race. They also thanked the Banning Unified School District for the allowing them to use the school vans to go to Yucaipa to participate in the event.

The Council congratulated the team on their achievement and asked some questions about the event and how students get to participate in the event.

2. San Gorgonio Memorial Hospital Update – Mark Turner, CEO

Mr. Turner thanked the Council for allowing him to give a brief update on the hospital. He stated that their financial performance continues to improve and this past year they increased their cash flow from operation by another \$700,000 dollars over the previous year up to \$4.6 million for the year which is about 9.5% of their net revenue. Their net revenue increased by over 14% primarily due to increases in in-patient days, surgeries, births, and emergency room

visits but they also received some federal stimulus funds as well for successfully implementing the first stage of electronic medical records in the hospital. They are current with their vendors and in this past year they were able to pass along wage increases for all of their employees and enhanced fringe benefits as well. Their cash reserves are still relatively low compared to industry standards but that is because they have been using the excess funds that they are earning to reinvest primarily in new medical equipment and technology, new surgical equipment, new beds for the patients and the equipment, and furnishings that they are placing in the new EDICU emergency building. Most of that growth and improvement in their financial performance is coming by way of their affiliation with Epic Management. Epic is a physician and hospital management company based in Redlands and they are owned by Beaver Medical Group and Loma Linda University Medical Center. Their owners are both invested heavily in healthcare delivery and invested heavily in the Pass Area and are proving to be very good partners for San Gorgonio Memorial Hospital. In the last couple of years Beaver Medical Group has added several physician specialists to the community. These doctors work for Beaver Medical Group but they serve the Pass Area and are stationed here full time and they use San Gorgonio Memorial Hospital to take care of their in-patients/out-patients surgeries or other procedures that need to be done. Right now they are currently pursuing strategic discussions with Loma Linda and with Epic as to how they can work together to provide more healthcare services in the Pass Area either on their campus or on other locations within the Pass Area. In regards to their facilities master plan this is a multi-phase, multi-year plan to construct modern state-of-the-art hospital facilities that will meet the State's strict seismic requirements and to provide expanding capacity to serve both current and future Pass Area residents. Measure A which is their 2006 Bond Measure of \$108 million dollars has funded all of the Phase 1 costs that include their most recent addition, the new emergency department and ICU building, which was just dedicated to the community. That building construction is complete but they cannot use it just yet for patient care until they get licensed by the Department of Public Health which they hope to have in the next two to three months. For that building alone it cost about \$30 million dollars and the remaining funds out of that \$108 million dollar bond measure have been spent on or are dedicated to be spent on other infrastructure development which will be done in approximately one year. They have one more building to go and that is Phase 2A which is a six-story patient care building that will provide them with 120 new private patient rooms, four new state-of-the-art surgery suits, new space for radiology and pharmacy, and a new main entrance to the hospital off of Wilson Street. The planning for that building is in the final stages of approval with the State. They do have to raise the funds to pay for that remaining building because the Measure A Bond Measure was not sufficient to be able to provide the funds for the construction of Phase 2A. Right now he is in pursuit of several different private funding sources to help pay for the cost of that building which right now is approximately \$185 million dollars including all of the internal remodels and expansions that are necessary in the existing building, as well as, construction of that 6-story patient care building. If they stay on plan, this new building would be open and operating by 2018. This is their plan and they think they have the right partners with Epic Management, Beaver Medical Group and Loma Linda University Medical Center and think they have the right plan to be able to accomplish the facilities that they need, the doctors that they need to take care of the patients in those facilities and to elevate the level of service quality and patient safety that is necessary to provide healthcare today and in the future in this Pass Area.

There were further questions from the Council in regards to securing the private funding for the hospital expansion and alternatives if they could not be done and also some questions about the Grand Jury report of the running of the hospital and staff/patient relationships/scores. Mr. Turner responded to each of the questions asked and also answered some questions as to why a wing of the hospital was closed and a patient satisfaction program. The Council also expressed their thanks and support of the hospital.

Meeting recessed at 6:06 p.m. and reconvened at 6:10 p.m.

CONSENT ITEMS

Councilman Miller pulled Consent Item No. 13 for discussion.

1. Approval of Minutes – Special Meeting – 12/20/12

Recommendation: That the minutes of the Special Meeting of December 20, 2012 be approved.

2. Approval of Minutes – Special Meeting – 1/08/13

Recommendation: That the minutes of the special meeting of January 8, 2013 be approved.

3. Approval of Minutes – Special Meeting – 01/8/13 (Closed Session)

Recommendation: That the minutes of special meeting of January 8, 2013 be approved.

4. Approval of Minutes – Regular Meeting – 01/08/13

Recommendation: That the minutes of the regular meeting of January 8, 2013 be approved.

5. Report of Investments for December 2012

Recommendation: That the Council receive and file.

6. Sole Source Purchase from Versatile Information Product, Inc. for Upgrading and Expanding the Department's Current Puma Digital Recording System in the Amount of \$21,016.74.

Recommendation: That the Council review and approve the Police Department's request to purchase upgraded Puma-4 Digital records and expand the recording system with the purchase of the Puma Digital Recording Management Software System through Versatile Information Products, Inc., as sole source provider, in the amount of \$21,026.74.

7. Resolution No. 2013-08, Reimbursable Funding for a Banning Police Department Team Building Workshop

Recommendation: That the City Council adopt Resolution No. 2013-08, Authorizing an \$10,124.00 from the City's General Fund to the Police Department's Training Account, which

will be reimbursed by the California Commission on Peace Officers Standards and Training (P.O.S.T.) under the P.O.S.T. Team Building Workshop Program.

8. Resolution No. 2013-09, Approving the Amendment to the Public Entity Risk Management Authority (PERMA) Joint Powers Agreement (JPA).

Recommendation: That the Council adopt Resolution No. 2013-09.

9. Resolution No. 2013-11, Accepting the 2013 Supplemental Law Enforcement Services Fund Allocation and Authorizing the Banning Police Department to Use the Funds Towards the Purchase of Law Enforcement Related Equipment and Training.

Recommendation: That the Council adopt Resolution No. 2013-11.

10. Resolution No. 2013-12, Side Letter Agreement with the San Bernardino Public Employees Association (SBPEA).

Recommendation: That the Council adopt Resolution No. 2013-12, approving Side Letter Agreement with the San Bernardino Public Employees Association (SBPEA) pending adoption of a Memorandum of Understanding (MOU) setting forth the complete negotiated terms and conditions of employment for the SBPEA represented employees.

11. Resolution No. 2013-13, Approving an Updated Resolution for Employer Paid Member Contributions to the California Public Employees' Retirement System.

Recommendation: That the Council adopt Resolution No. 2013-13.

12. Resolution No. 2011-12 Annual Report of Development Impact Fees

Recommendation: That the Council review and approve the 2011-12 Annual Report of Development Impact Fees as required by the Mitigation Fee Act.

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

Motion Welch/Botts to approve Consent Items 1-12. Motion carried, all in favor.

13. Approve the Utility Agreement between the City of Banning and Southern California Gas Company for Relocation of 6" Gas Line.

Councilman Miller said the only reason he is asking about this item is that he had received a comment from somebody living in Serrano Del Vista worried about pipes that are running along Sunset and he would like it on the record that Mr. Burk told him that those pipes were there for storage and there would not be any construction along Sunset towards Serrano Del Vista.

Director Burk said Consent Item No. 13 that the Council is approving this evening has nothing to do with the pipes that are on Sunset today. What you are being asked to approve is a 6" gas main agreeing that when the Sunset Grade Separation gets under construction we are participating \$42,000 dollars of the cost to relocate the existing gas line. The pipes that are on the road today are not Item No. 13 but for the record, the pipes are a water recycle waterline project that was approved by the Council about a month and a half ago. It is the backbone waterline that will go from the Wastewater Treatment Plant to the Sun Lakes development on the west end designed in 1991 and installed in 2013. Some of the pipe is stockpiled south of Westward in the dirt road across from the college and that is just for stockpiling reasons right now.

Motion Miller/Welch to approve Consent Items 13 to approve the Utility Agreement for the relocation of a 6" gas line within the project area of Sunset Avenue Grade Separation as shown on Exhibit "A". Mayor Franklin opened the item for public comments. There were none. **Motion carried, all in favor.**

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

City Council

Councilmember Welch –

- Thursday evening at the Fire Memories Museum the Banning Chamber of Commerce will hold its Installation Dinner for the new incoming board members and will also be recognizing the "Citizen of Year" – Sue Palmer. He said that she is a past City Council Member and also has been responsible for the bigger part of Stagecoach Days for probably the last 25 years. You can still make reservations by calling the Banning Chamber of Commerce office.
- Saturday, January 26th at the Beaumont Civic Center City Hall the Veterans Expo will be held from 10 a.m. to 2 p.m. and he would encourage any family member, widow/widowers, active duty and veterans to please attend this event if you have any questions about updates on your benefit programs. They will also be recognizing especially WWII and Korean Veterans.

Mayor Franklin –

- Last Monday she traveled to Sacramento with the City's Electric Director to the Southern California Public Power Authority Meeting for Capital Days. They heard from several of the elected officials from the Assembly, as well as, the Senate. One of the main topics of discussion had to do with the Delta Plan and based on the five different people who spoke the cost of the Delta Plan went anywhere from \$9 billion up to \$50 billion.
- Last Thursday she attended the League of California Cities Policy Committee Meeting for Community Services and one of the handouts they received had to do with "Healthy Living". Also they passed out a handout in regards to what the obesity rate is for every city for our children in the state of California. The high was 53% and Banning came in at 45.9% and the lowest was 11%.

City Committee Reports - None

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

Report by City Manager

- There will be a ribbon cutting at the Haven this Monday at 10 a.m.
- Feb. 6, 2013 there will be a Special Ceremonial Council Meeting starting at 5 p.m. with a reception to follow.

ITEMS FOR FUTURE AGENDAS

New Items – None

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials

ADJOURNMENT

By common consent the meeting adjourned at 6:17 p.m.

Marie A. Calderon, City Clerk

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

CITY COUNCIL AGENDA

Date: February 12, 2013

TO: City Council

FROM: June Overholt, Administrative Services Director

SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of December 2012

RECOMMENDATION: The City Council review and ratify the following reports per the California Government Code.

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of December 2012.

The reports are:

Expenditure approval lists

December 6, 2012	264,283.86
December 13, 2012	146,684.31
December 19, 2012	568,417.10
December 31, 2012	673,958.10

February 6, 2013 2,853,007.41 (December Month End)

Payroll check registers

December 14, 2012	6,246.65
December 28, 2012	6,739.43

Payroll direct deposits*

December 14, 2012	318,124.49
December 28, 2012	286,417.22

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As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

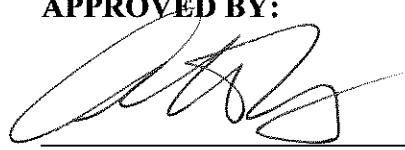
Report Prepared by: Jenna Harrell, Accounts Payable

RECOMMENDED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

CITY of BANNING

Fund/Department Legend

Fund/Department Legend

0001 General Fund Departments

0001 – General
1000 – City Council
1200 – City Manager
1300 – Human Resources
1400 – City Clerk
1500 – Elections
1800 – City Attorney
1900 – Fiscal Services
1910 – Purchasing & A/P
2060 – TV Government Access
2200 – Police
2210 -- Dispatch
2279 – TASIN – SB621 (Police)
2300 – Animal Control
2400 – Fire
2479 – TASIN – SB621 (Fire)
2700 – Building Safety
2740 – Code Enforcement
2800 – Planning
3000 – Engineering
3200 – Building Maintenance
3600 – Parks
4000 – Recreation
4010 – Aquatics
4050 – Senior Center
4060 – Sr. Center Advisory Board
4500 – Central Services
4800 – Debt Service
5400 – Community Enhancement

204 – D.A.R.E. Donation Fund
300 – City Administration COP Debt Service
360 – Sun Lakes CFD #86-1
365 – Wilson Street #91-1 Assessment Debt
370 – Area Police Computer Fund
375 – Fair Oaks #2004-01 Assessment Debt
376 – Cameo Homes
400 – Police Facilities Development
410 – Fire Facilities Development
420 – Traffic Control Facility Fund
421 – Ramsey/HIGHLAND Home Road Signal
430 – General Facilities Fund
441 – Sunset Grade Separation Fund
444 – Wilson Median Fund
451 – Park Development Fund
470 – Capital Improvement Fund
475 – Fair Oaks #2004-01 Assessment District
600 – Airport Fund
610 – Transit Fund
660 – Water Fund
661 – Water Capital Facilities
662 – Irrigation Water Fund
663 – BUA Water Capital Project Fund
669 – BUA Water Debt Service Fund
670 – Electric Fund
672 – Rate Stability Fund
673 – Electric Improvement Fund
674 – '07 Electric Revenue Bond Project Fund
675 – Public Benefit Fund
678 – '07 Electric Revenue Bond Debt Service Fund
680 – Wastewater Fund
681 – Wastewater Capital Facility Fund
682 – Wastewater Tertiary
683 – BUA Wastewater Capital Project Fund
685 – State Revolving Loan Fund
689 – BUA Wastewater Debt Service Fund
690 – Refuse Fund
700 – Risk Management Fund
702 – Fleet Maintenance
703 – Information Systems Services
761 -- Utility Billing Administration
805 – Redevelopment Obligation Retirement Fund
810 – Successor Housing Agency
830 – Debt Service Fund
850 – Successor Agency
855 – 2007 TABS Bond Proceeds
856 – 2003 TABS Bond Proceeds
857 – 2003 TABS Bond Proceeds Low/Mod
860 – Project Fund

All Other Funds

002 – Developer Deposit Fund
003 – Riverside County MOU
100 – Gas Tax Street Fund
101 – Measure A Street Fund
103 – SB 300 Street Fund
104 – Article 3 Sidewalk Fund
110 – CDBG Fund
111 – Landscape Maintenance
132 – Air Quality Improvement Fund
140 – Asset Forfeiture/Police Fund
148 – Supplemental Law Enforcement
149 – Public Safety Sales Tax Fund
150 – State Park Bond Fund
190 – Housing Authority Fund
200 – Special Donation Fund
201 – Sr. Center Activities Fund
202 – Animal Control Reserve Fund
203 – Police Volunteer Fund

CITY COUNCIL AGENDA

DATE: February 12, 2013

TO: City Council

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

SUBJECT: City Business Permit for Symons Emergency Specialties

RECOMMENDATION: The City Council review and consider approving a City Business Permit for Symons Emergency Specialties to provide non-emergency medical transport services within the City Limits of Banning.

BACKGROUND / ANALYSIS:

Per Banning Municipal Code 5.04.110 "Registration for Business tax certificate", Council approval is required for any business providing ambulance services.

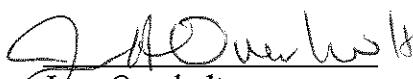
Mr. Judd Symons is the CEO for Symons Emergency Specialties which is a private Basic Life Support (BLS) ambulance service that intends to provide non-emergency medical transportation for both critical and non-critical patients in the City of Banning and County of Riverside. Currently, Lexxiom Medical Services is licensed to provide service in Banning. As of January 1, 2013, they have merged with Symons Emergency Specialties.

Symons Emergency Specialties 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.

Symons Emergency Specialties 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 5 ambulance companies that provide non-emergency medical transport services in the City of Banning.

FISCAL IMPACT: None

RECOMMENDED BY:


June Overholt
Administration Services Director/
Deputy City Manager

APPROVED BY:


Andrew Takata
City Manager

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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: February 12, 2013

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2013-10, "Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2013/2014"

RECOMMENDATION: Adopt Resolution No. 2013-10, "Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2013/2014."

JUSTIFICATION: The City Council approved the formation of Landscape Maintenance District No. 1 ("the District") by adopting Resolution No. 1990-59 on August 14, 1990. The adoption of Resolution No. 2013-10 will enable the City Engineer to prepare for the assessment for Fiscal Year 2013/2014.

BACKGROUND: In accordance with the "Landscaping and Lighting Act of 1972" ("1972 Act") of the Streets and Highways Code, the City Council adopted a resolution on August 14, 1990 ordering the formation of Landscape Maintenance District No. 1, the boundaries of which are shown in Attachment "A". On May 10, 2005, the City Council approved Resolution No. 2005-36 ordering Annexation No. 1 (consisting of five tracts and three tentative tracts) to Landscape Maintenance District No. 1. The District, by special benefit assessments, provides funding for the servicing and maintenance of certain landscape areas within the City of Banning, all of which are located in the public right-of-way. The 1972 Act requires that assessments are to be levied according to benefit rather than according to assessed value. Resolution No. 2013-10 will initiate the proceedings to update the District for Fiscal Year 2013/2014. A tentative schedule for updating the District, as required by the "Landscaping and Lighting Act of 1972," is attached hereto as Attachment "B" for your information.

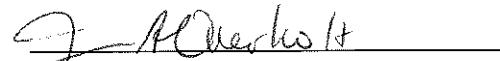
FISCAL DATA: Not applicable. A detailed estimate will be prepared and forwarded with the Engineer's Report.

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. 2013-10

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, INITIATING PROCEEDINGS TO UPDATE LANDSCAPE
MAINTENANCE DISTRICT NO. 1 FOR THE FISCAL YEAR 2013/2014, PURSUANT TO
THE LANDSCAPING AND LIGHTING ACT OF 1972**

WHEREAS, the City Council, pursuant to the provisions of the "Landscaping and Lighting Act of 1972," Part 2 of Division 15 of the Streets and Highways Code of California, beginning with Section 22500, desires to initiate proceedings to update the City of Banning's Landscape Maintenance District No. 1, and to levy and collect annual assessments to pay for the operation, maintenance and servicing of landscaping and all appurtenant facilities related thereto.

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

SECTION 1. The City Council desires to update Landscape Maintenance District No. 1 for Fiscal Year 2013/2014, pursuant to the "Landscaping and Lighting Act of 1972" (Section 22500 and following, Streets and Highways Code) for the purpose of the following improvements:

Maintaining and servicing street trees, parkways, median islands, perimeter strips and backup walls, side slopes adjacent to sidewalks and storm drains, open space areas, flood detention or retention basins, and the irrigation of the above improvements.

SECTION 2. The City Council hereby directs the City Engineer to prepare and file with the City Clerk an Engineer's Report in accordance with Article 4 of Chapter 1 of the "Landscaping and Lighting Act of 1972."

SECTION 3. The fee to be assessed will not exceed the reasonable cost of providing the service. The fee charged shall be based on the rate and methodology set forth in Resolution Nos. 1990-59 and 2005-36.

SECTION 4. The Mayor shall sign this resolution and the City Clerk shall attest and certify to the passage and adoption thereof.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2013.

Debbie Franklin, Mayor

ATTEST:

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

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**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. 2013-10 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 12th day of February, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT "A"

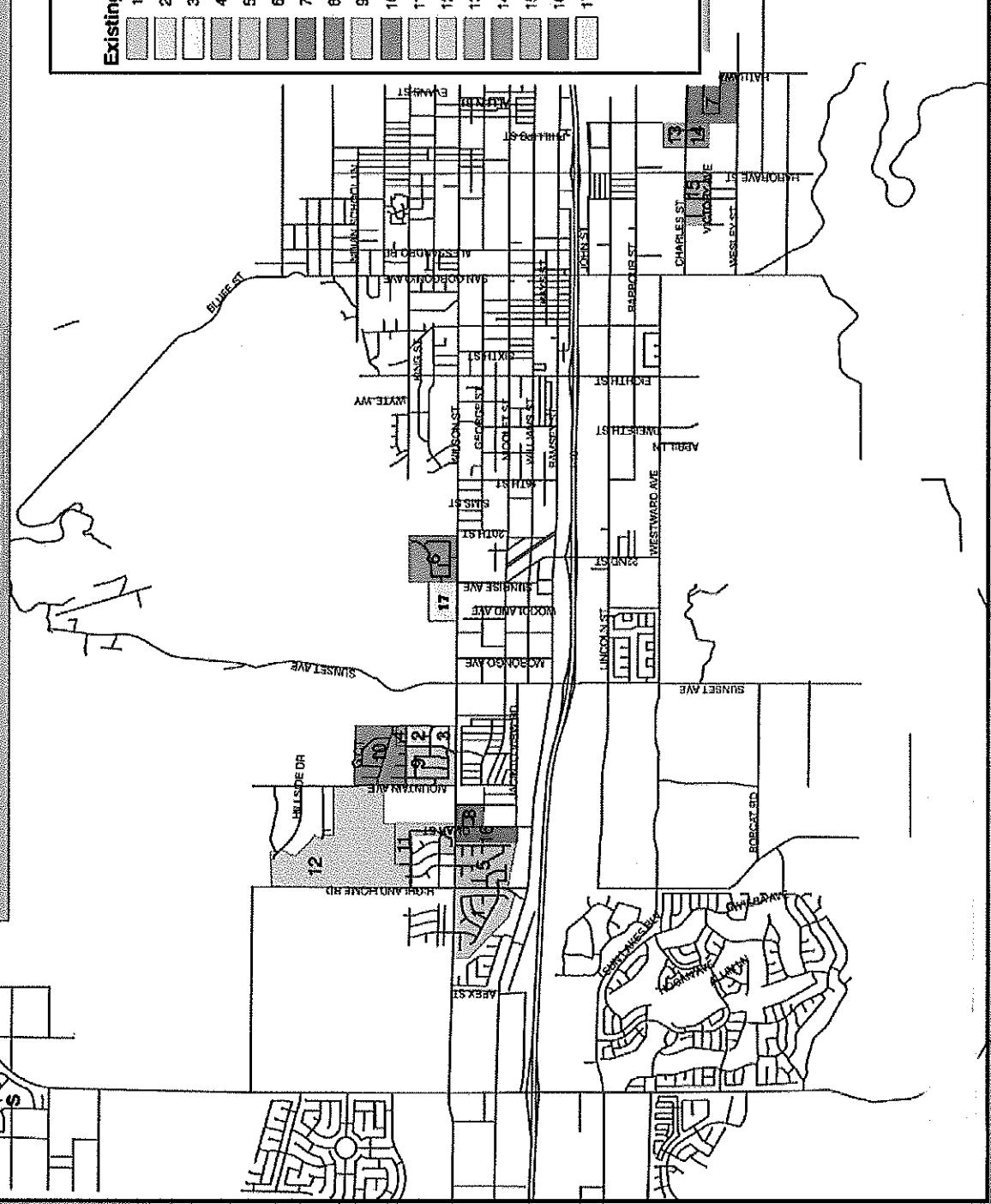
**LANDSCAPE MAINTENANCE DISTRICT NO. 1
FOR FISCAL YEAR 2013/2014**

Map of Landscape Maintenance District No. 1

2013/2014

Legend

Existing Tracts
1. 21882 Snow Creek I
2. 22810 Dev. Corp
3. 22811 Dev. Corp
4. 22913 Arce Bros.
5. 23446 Highland Estates
6. 23598 Snow Creek II
7. 28252 Fair Oaks
8. 29721 The Pines
9. 30186 Wilson Homes
10. 30222 Wilson Homes
11. 30793 Fiesta Collection
12. 30906 Evergreen Estates
13. 31833 Fair Oaks
14. 31834 Fair Oaks
15. 31835 Fair Oaks
16. 32109 Sunset Ridge
17. 30642 Diversified Pacific Opportunity Fund



ATTACHMENT "B"

TENTATIVE SCHEDULE UPDATING LANDSCAPE MAINTENANCE DISTRICT NO. 1

Item	Council Meeting
Resolution Initiating Update	February 12, 2013
Resolution of Intention (Approving Engineer's Report)	May 14, 2013
Resolution Confirming Assessment (Public Hearing)	June 11, 2013

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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **February 12, 2013**

TO: **City Council**

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

SUBJECT: **Resolution No. 2013-14, A Resolution of the City Council of the City of Banning Authorizing the City Manager or his Designee to Execute For and On Behalf of the City of Banning any actions necessary for the purpose of obtaining Financial Assistance Provided by the Governor's Office of Homeland Security and authorizing the Administrative Services Director to make any necessary budget adjustments upon receiving such funds**

RECOMMENDATION:

Adopt Resolution No. 2013-14, authorizing the execution of Appendix C, Governing Body Resolution, of the FY 10-11, FY11-12 and FY12-13 California Transit Security Grant Program and the the California Transit Assistance Fund (CTSGP-CTAF) Applications respectively.

JUSTIFICATION: Resolution No. 2013-14 is required to obtain funding made available by CAL-EMA through the FY 2010-11, 2011-12 and 2012-13 California Transit Security Grant Program (CTSGP) California Transit Assistance Fund (CTAF).

BACKGROUND: On January 07, 2013 staff submitted Investment Justifications identifying a project to purchase and install a wireless communication download system to be located at the city yard, to the the California Emergency Management Agency (CalEMA) for consideration. The approved funding amounts for City of Banning are as follows:

- FY 2010-11 \$18,835.00
- FY 2011-12 \$18,833.00
- FY 2012-13 \$19,198.00

The addition of a compatible Wireless WIFI Communications system will dramatically increase the reliability of the surveillance system that is currently installed and will further enhance passenger safety by improving the monitoring of boarding and exiting operations reducing fraudulent and insurance related claims.

Having footage automatically downloaded and stored eliminates the need to remove hard drives for data retrieval, which virtually removes any chance of loss of recorded footage. While having surveillance equipment on board enhances the physical security and safety of all passengers, the ability to view the recorded footage is of utmost importance. When removal of a

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hard drive is required to retrieve data it can sometimes be corrupted or overwritten due to storage limitations.

Staff received notification that the specified project meets the guidelines for funding. A Governing Body Resolution approved by the City Council of the City of Banning must be received as a part of the application to complete the funding process.

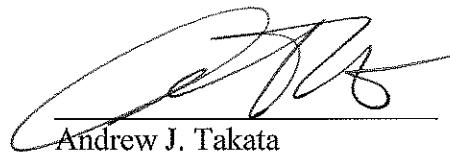
FISCAL DATA: An increase of \$56,866.00 to Account 610-5800-341.31.61

RECOMMENDED BY:



Heidi Meraz
Community Services Director

APPROVED BY



Andrew J. Takata
City Manager

REVIEWED BY:



June Overholt
Deputy City Manager/
Administrative Services Director



RESOLUTION NO. 2013-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING CALIFORNIA, AUTHORIZING THE CITY MANAGER OR THE ADMINISTRATIVE SERVICES DIRECTOR TO EXECUTE FOR AND ON BEHALF OF THE CITY OF BANNING ANY ACTION NECESSARY FOR THE PURPOSE OF OBTAINING FINANCIAL ASSISTANCE PROVIDED BY THE GOVERNOR'S OFFICE OF HOMELAND SECURITY AND AUTHORIZING THE ADMISTRATIVE SERVICES DIRECTOR TO MAKE ANY NECESSARY BUDGET ADJUSTMENTS UPON OBTAINING SUCH FUNDS

WHEREAS, the City of Banning Transit Department submitted Investment Justifications identifying a project that was given approval for funding through the California Emergency Management Agency (CalEMA) Prop 1B for FY 2010-11, FY 2011-12 and FY 2012-13; and

WHEREAS, the project identified and approved will be used for the purchase and installation of a wireless WIFI communication download system for the transit and dial-a-ride buses; and

WHEREAS, the City of Banning has been approved to apply for CalEMA Prop 1B funds in the amounts of \$18,845.00 for FY 2010-11, \$18,833.00 for FY 2011-12 and \$19,198.00 for FY 2012-13; and

WHEREAS, a Governing Body Resolution approved by the City Council of the City of Banning must be received by CalEMA to complete the application process

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

Authorizing the City Manager or the Administrative Services Director/Deputy City Manager to execute for and on behalf of the City of Banning and any action necessary for the purpose of obtaining financial assistance provided by the Governor's Office of Homeland Security and authorizing the Administrative Services Director to make any necessary budget adjustments upon obtaining such funds

PASSED, APPROVED AND ADOPTED this 12th day of February, 2013.

Deborah Franklin, Mayor
City of Banning

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ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-94 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2013 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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CITY COUNCIL AGENDA

DATE: February 12, 2013

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2013-15, "Approving a Professional Services Agreement with Albert A. Webb Associates for the Design of Street Improvements on Westward Avenue"

RECOMMENDATION: Adopt Resolution No. 2013-15:

- I. Approving a Professional Services Agreement with Albert A. Webb Associates for the Design of Street Improvements on Westward Avenue for an amount not to exceed \$38,520.00.
- II. Authorizing the Administrative Services Director to make necessary budget adjustments and make the necessary budget adjustments and appropriations in an amount of \$25,320.00 from the SB 300 Fund to Account No. 101-4900-431.33-53.
- III. Authorizing the City Manager to execute the Professional Services Agreement with Albert A. Webb Associates of Riverside, California with Albert A. Webb Associates of Riverside, California.

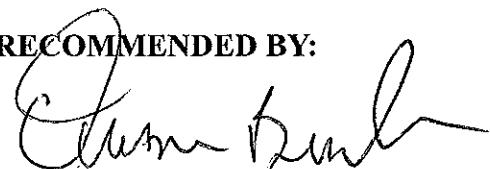
JUSTIFICATION: It is necessary to award a contract to Albert A. Webb Associates for the design of street improvements for Westward Avenue in order to obtain a complete bid package for the construction of the street improvements.

BACKGROUND: City staff has identified the need to reduce traffic congestion, increase traffic flow and increase emergency response times during the construction of the Riverside County Transportation Commission (RCTC) led, Sunset Avenue Grade Separation project. The grade separation project is tentatively scheduled to commence in June 2013.

The primary scope of services include field surveys of the existing pavement and driveways, preparation of street improvements, signing and striping, prepare Storm Water Pollution Prevention Plan (SWPPP), and assist with bidding and construction (see attached Exhibit "A" for the full scope of services).

FISCAL DATA: An appropriation is requested in the amount of \$25,320.00 from the SB 300 Fund to Account No. 101-4900-431.33-53

RECOMMENDED BY:


Duane Burk,
Director of Public Works

REVIEWED BY:


June Overholt,
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata,
City Manager

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following Services:

Task 1 – Field Survey

- A. Field survey the existing pavement at intersections of Westward Avenue/Highland Home Road and Westward Avenue/Highland.
- B. Field Survey existing paved sections and driveways along alignments.
- C. Use Right-of-Way map prepared for the Irrigation Water Supply System Project for the proposed project

Task 2 – Preparation of Street Improvement, Signing & Striping, Storm Water Pollution Prevention Plan and Cost Estimate

- D. Prepare interim street improvement plans for Westward Avenue from Highland Home Road to Sunset Street.
- E. Prepare cross sections every Fifty (50) feet and provide grading limits.
- F. Design emergency gates on both sides of Westward Avenue.
- G. Prepare signing and striping plan.
- H. Prepare Storm Water Pollution Prevention Plan.
- I. Prepare engineer's cost estimate.

Task 3 – Meetings

- J. Attend two (2) meetings.
- K. Prepare meeting minutes and summaries.

Task 4 – Assistancess during Bidding and Construction

- L. Provide assistance during bidding and construction services upon request.

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

- A. Field Topography
- B. Street Improvement Plans
- C. Street Cross Sections
- D. Signing & Striping Plans

RESOLUTION NO. 2013-15

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,
APPROVING A CONTRACT SERVICES AGREEMENT WITH ALBERT A. WEBB
ASSOCIATES FOR THE DESIGN OF STREET IMPROVEMENTS ON WESTWARD
AVENUE**

WHEREAS, City staff has identified the need to reduce traffic congestion, increase traffic flow and increase emergency response times during the construction of the Riverside County Transportation Commission (RCTC) led, Sunset Avenue Grade Separation project; and

WHEREAS, the Sunset Avenue Grade Separation project is tentatively scheduled to commence in June 2013; and

WHEREAS, it is necessary to award a contract to Albert A. Webb Associates for the design of street improvements for Westward Avenue in order to obtain a complete bid package for the construction of the street improvements.

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

SECTION 1. The City Council adopts Resolution No. 2013-15 approving a Contract Services Agreement with Albert A. Webb Associates for an amount not to exceed \$38,520.00.

SECTION 2. The Administrative Services Director is hereby authorized to appropriate \$25,320.00 from the SB 300 Fund to Account No. 101-4900-431.33-53 and to make the necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement.

SECTION 3. The City Manager is hereby authorized to execute the Agreement with Albert A. Webb Associates for engineering design 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 12th day of February, 2013.

Deborah Franklin, Mayor
City of Banning

ATTEST:

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

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-15 was duly adopted by the City Council of the City of Banning at the regular meeting thereof held on the 12th day of February, 2013, 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: **February 12, 2013**

TO: **Honorable Mayor and City Council**

FROM: **Kahono Oei, City Engineer**

SUBJECT: **Resolution No. 2013-16, “Approving the Project Development Cooperative Agreement with the State of California, Department of Transportation (Caltrans), for the Grade Separation and Ramps Modifications at Sunset Avenue”**

RECOMMENDATION:

- I.** Adopt Resolution No. 2013-16, “Approving the Construction Cooperative Agreement with the State of California, Department of Transportation (Caltrans), for the Grade Separation and Ramps Modifications at Sunset Avenue,” attached hereto as Exhibit “A.”
- II.** Authorize the Mayor to execute the Construction Cooperative Agreement with the State of California, Department of Transportation (Caltrans)

JUSTIFICATION: It is essential that the City Council approve Resolution No. 2013-16 in order for the City of Banning to construct the grade separation and allow Caltrans to monitor, participate in, and assist with the development of said project.

BACKGROUND: The Sunset Avenue railroad crossing is at street level and causes significant traffic delays to and from the southwest portion of the City of Banning. The proposed underpass would enhance traffic flows along Sunset Avenue and would provide a route for emergency services to access residents south of the railroad tracks, while improving overall safety in the area.

In undertaking the Sunset Grade Separation project, there were a number of contractual agreements which were required, including agreements with the Union Pacific Railroad for the grade crossing, a 3-party agreement with Caltrans and the County for construction within the State right-of-way, and other agreements. These agencies tend to have their own form agreements for doing work within their rights of way. For example, the Railroad’s standard agreements provide that they will oversee the work, oversee the costs of such work, and bill the City for all such costs, including for change orders. This leaves an agency, such as the City of Banning, with no meaningful control over these costs.

Specifically as to the subject Cooperation Agreement with Caltrans, the City Attorney did have a productive dialogue with Caltrans in terms of somewhat improving the City’s contract position.

Some of the City Attorney's requested changes were made, but ultimately the proposed Agreement does not give the City budget control over project costs, and the County is still fully overseeing the work. Nevertheless, the City Attorney's office does appreciate need to proceed with these projects.

In order to successfully continue with this project and the construction phase, it is essential that the City of Banning work with the State of California, Department of Transportation (Caltrans) and enter into the Construction Cooperative Agreement, attached hereto as Exhibit "A". The Cooperative Agreement will permit Caltrans to monitor, participate in, and oversee various aspects of the project, including, but not limited to, approve Quality Management Plan (QMP), participate in the selection and retention of any consultants who may participate, selection of construction management firm, and issue encroachment permits for State Highway System (SHS). In the future, another Cooperative Agreement will be needed for the landscaping phase of the project.

FISCAL DATA: The City shall bear all related project development costs such as design, construction and construction management phases.

RECOMMENDED BY:



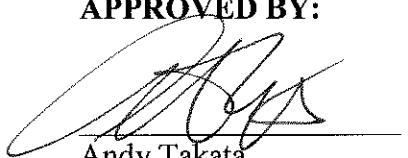
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2013-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE CONSTRUCTION COOPERATIVE AGREEMENT WITH THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (CALTRANS), FOR THE GRADE SEPARATION AND RAMPS MODIFICATIONS AT SUNSET AVENUE

WHEREAS, the Sunset Avenue railroad crossing is at street level and causes significant traffic delays to and from the southwest portion of the City of Banning; and

WHEREAS, staff has been working closely with Caltrans for a number of years to advance Project No. 2006-05 "Sunset Avenue Grade Separation."; and

WHEREAS, it is essential that the City of Banning enter into a Construction Cooperative Agreement with the State of California, Department of Transportation (Caltrans) in order to allow for the State to monitor, participate in, and oversee various aspects of the project.

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

Section I. Approve the Construction Cooperative Agreement with the State of California, Department of Transportation (Caltrans), for the Grade Separation and Ramps Modifications at Sunset Avenue, attached hereto as Exhibit "A."

Section II. Authorize the Mayor to execute the Construction Cooperative Agreement with State of California, Department of Transportation (Caltrans). This authorization will be rescinded if the Cooperative Agreement is not executed by both parties within one hundred eighty (180) days of the date of this resolution.

PASSED, APPROVED, AND ADOPTED this 12th day of February, 2013.

Deborah Franklin, 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 Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2013-16 was adopted by the City Council of the City of Banning at the Regular Meeting thereof held on the 12th day of February, 2013.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"
CONSTRUCTION COOPERATIVE AGREEMENT
WITH THE STATE OF CALIFORNIA,
DEPARTMENT OF TRANSPORTATION (CALTRANS)

EXHIBIT "A"
CONSTRUCTION COOPERATIVE AGREEMENT
WITH THE STATE OF CALIFORNIA,
DEPARTMENT OF TRANSPORTATION (CALTRANS)

CONSTRUCTION COOPERATIVE AGREEMENT

This agreement, effective on _____, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Banning, a body politic and municipal corporation or chartered city of the State of California, referred to as CITY.

County of Riverside, a political subdivision of the State of California, referred to as COUNTY.

For the purpose of this agreement, the term LOCAL AGENCIES collectively refers to CITY and COUNTY.

For the purpose of this agreement, the term PARTNERS collectively refers to CALTRANS and LOCAL AGENCIES (all signatory parties to this agreement). The term PARTNER refers to any one of those signatory parties individually.

RECITALS

1. California Streets and Highways Code sections 114 and 130 authorize PARTNERS to enter into a cooperative agreement for performance of work within the State Highway System (SHS) right of way.
2. This agreement outlines the terms and conditions of cooperation between PARTNERS to construct a Railroad Grade Separation on Sunset Avenue near the Sunset Avenue/Interstate 10 (I-10) Interchange located in the City of Banning. Construction will include modifications to the Interchange related to and required by the railroad grade separation improvements.

For the purpose of this agreement, construction of Railroad Grade Separation Improvements and Interchange modifications on Sunset Avenue and I-10 in the City of Banning will be referred to as PROJECT. All responsibilities assigned in this agreement to complete the Construction will be referred to as OBLIGATIONS.

3. There are no prior PROJECT-related cooperative agreements.
4. Prior to this agreement, COUNTY developed the Plans, Specifications and Estimate and COUNTY developed the Right of Way Certification.
5. COUNTY statutorily exempted this project pursuant to CEQA. CALTRANS signed and approved the Categorical Exclusion on February 28, 2011 pursuant to NEPA.

6. CALTRANS approves all Hot Mix Asphalt (HMA) Job Mix Formula (JMF) and concrete mixes to be used on the SHS. CALTRANS will be compensated for all cost associated with these tasks in the amount of \$25,000. CALTRANS will be reimbursed from CITY's CMAQ construction support funds.
7. In this agreement capitalized words represent defined terms and acronyms. The Definitions section contains a complete definition of capitalized term.
8. From this point forward, PARTNERS define in this agreement the terms and conditions under which they will accomplish OBLIGATIONS.

RESPONSIBILITIES

9. CITY is SPONSOR for 100% of PROJECT.
10. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
11. LOCAL AGENCIES may provide IQA for the portions of WORK outside existing and proposed SHS right of way.
12. CITY is the only FUNDING PARTNER for this agreement. CITY's funding commitment is defined in the FUNDING SUMMARY.
13. COUNTY is the CEQA lead agency for PROJECT.
14. CALTRANS is the CEQA responsible agency for PROJECT.
15. CALTRANS is the NEPA lead agency for PROJECT.
16. COUNTY is IMPLEMENTING AGENCY for CONSTRUCTION.

SCOPE

Scope: General

17. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
18. IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN. The CALTRANS District Construction Division, with input from Structure

Construction must approve the QMP before the encroachment permit for construction is issued.

19. Any PARTNER may, at its own expense, have representatives observe any OBLIGATIONS performed by another PARTNER. Observation does not constitute authority over those OBLIGATIONS.
20. Each PARTNER will ensure that all of its personnel participating in OBLIGATIONS are appropriately qualified, and if necessary, licensed to perform the tasks assigned to them.
21. PARTNERS will invite each other to participate in the selection and retention of any consultants who participate in OBLIGATIONS. IMPLEMENTING AGENCY shall retain the consultants. At least one representative from the Construction Division of CALTRANS shall participate in the selection process. A construction management firm shall not be selected without the approval by this representative.
22. If WORK is done under contract (not completed by a PARTNER's own employees) and is governed by the California Labor Code's definition of "public works" (section 1720(a)(a)), that PARTNER will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations.
23. IMPLEMENTING AGENCY for each PROJECT COMPONENT included in this agreement will be available to help resolve problems generated by that component for the entire duration of PROJECT.
24. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right of way.

Contractors and/or agents, and utility owners will not perform WORK without an encroachment permit issued in their name.

25. If any PARTNER discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTNER will notify all PARTNERS within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.
26. PARTNERS will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) will govern the disclosure of such documents in the event that PARTNERS share said documents with each other.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete PROJECT without

the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.

27. If any PARTNER receives a public records request, pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public records. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
28. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.
29. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
30. CITY and COUNTY, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits and outside the existing SHS right of way. CITY and COUNTY will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
31. If HM-2 is found within PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
32. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
33. PARTNERS will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTNER's responsibilities in this agreement.
34. IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with written monthly progress reports during the implementation of OBLIGATIONS in that component.
35. Upon OBLIGATION COMPLETION, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the SHS within SHS right of way as part of WORK become the property of CALTRANS.

CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right of way.

36. IMPLEMENTING AGENCY for a PROJECT COMPONENT will accept, reject, compromise, settle, or litigate claims of any non-agreement parties hired to do WORK in that component.
37. PARTNERS will confer on any claim that may affect OBLIGATIONS or PARTNERS' liability or responsibility under this agreement in order to retain resolution possibilities for potential future claims. No PARTNER will prejudice the rights of another PARTNER until after PARTNERS confer on claim.
38. PARTNERS will maintain, and will ensure that any party hired by PARTNERS to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs, and provide billing and payment support.
39. PARTNERS will comply with the appropriate federal cost principles and administrative requirements outlined in the Applicable Cost Principles and Administrative Requirements table below. These principles and requirements apply to all funding types included in this agreement.
40. PARTNERS will ensure that any party hired to participate in OBLIGATIONS will comply with the appropriate federal cost principles and administrative requirements outlined in the Applicable Cost Principles and Administrative Requirements table below.

Applicable Cost Principles and Administration Requirements		
The federal cost principles and administrative requirements associated with each organization type apply to that organization.		
Organization Type	Cost Principles	Administrative Requirements
Federal Governments	2 CFR Part 225	OMB A-102
State and Local Government	2 CFR, Part 225	49 CFR, Part 18
Educational Institutions	2 CFR, Part 220	2 CFR, Part 215
Non-Profit Organizations	2 CFR, Part 230	2 CFR, Part 215
For Profit Organizations	48 CFR, Chapter 1, Part 31	49 CFR, Part 18
CFR (Code of Federal Regulations) OMB (Office of Management and Budget)		
Related URLs: <ul style="list-style-type: none"> • Various OMB Circulars: http://www.whitehouse.gov/omb/grants_circulars • Code of Federal Regulations: http://www.gpoaccess.gov/CFR 		

41. PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this agreement.
42. PARTNERS will retain all OBLIGATIONS-related records for three (3) years after the final voucher.
43. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA, and LOCAL AGENCIES will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within 30 calendar days of receipt.

Upon completion of the final audit, PARTNERS have 30 days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTNERS is subject to dispute resolution. Any costs arising out of the dispute resolution process will be paid within 30 calendar days of the final audit or dispute resolution findings.

44. PARTNERS will undergo an annual audit in accordance with the Single Audit Act of OMB Circular A-133.
45. Any PARTNER that hires another party to participate in OBLIGATIONS will conduct a pre-award audit of that party in accordance with the *Local Assistance Procedures Manual*.
46. PARTNERS will not incur costs beyond the funding commitments in this agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, IMPLEMENTING AGENCY will promptly notify SPONSOR.
IMPLEMENTING AGENCY has no obligation to perform WORK if funds to perform WORK are unavailable.
47. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.

48. If WORK stops for any reason, each PARTNER will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each PARTNER's responsibilities in this agreement, in order to keep PROJECT in environmental compliance until WORK resumes.
49. Each PARTNER accepts responsibility to complete the activities that it selected on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this agreement.
50. Contract administration procedures shall conform to CALTRANS' Construction Manual, Local Assistance Procedures Manual (if Federal funds are used), and the PROJECT encroachment permits.
51. If the Resident Engineer is not also a registered Landscape Architect, COUNTY will furnish, at CITY expense and subject to approval of CALTRANS Landscape Architecture, a registered Landscape Architect to perform work related to architecture treatment and landscaping and to perform the function of an Assistant Resident Engineer/Inspector who is responsible for both daily on-site inspection and final decisions including, but not limited to, any highway planting and the irrigation systems that comprise a portion of the PROJECT work, consistent with any applicable measures in the environmental commitments record. Final decisions shall continue to be subject to the satisfaction and approval of CALTRANS.
52. Within one hundred eighty (180) days following the completion and acceptance of the PROJECT construction contract, IMPLEMENTING AGENCY shall furnish CALTRANS a complete set of "As-Built" plans (hard copy and electronic formats) in accordance with CALTRANS' then current CADD Users Manual, Plans Preparation Manual, and CALTRANS practice. The submittal must also include all CALTRANS requested contract records, including survey documents and Records of Surveys (to include monument perpetuation per the Land Surveyor Act, (Business & Professions Code Section 8771), including but not limited to preconstruction monumentation documents and a post construction Record of Survey that have been filed with the County Surveyor's Office). COUNTY shall also submit corrected full-sized hardcopy structure plans.

Scope: Environmental Permits, Approvals and Agreements

53. PARTNERS anticipate that environmental permits, approvals, and applicable agreements are not needed for PROJECT. In the event that environmental permits, approvals, and applicable agreements are needed for PROJECT, PARTNERS will amend this agreement to include completion of those environmental permits, approvals, and applicable agreements.

Environmental Permits						
Permit	Coordinate	Prepare	Obtain	Implement	Renew	Amend
NONE	N/A	N/A	N/A	N/A	N/A	N/A

Scope: CONSTRUCTION

54. COUNTY will advertise, open bids, award, approve, and administer the construction contract in accordance with the California Public Contract Code and the California Labor Code.

COUNTY will not advertise the construction contract until CALTRANS completes or accepts the final plans, specifications, and estimate package; CALTRANS approves the Right of Way Certification; and SPONSOR verifies full funding of CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL.

By accepting responsibility to advertise and award the construction contract, COUNTY also accepts responsibility to administer the construction contract.

PARTNERS agree that COUNTY is designated as the Legally Responsible Person and the Approved Signatory Authority pursuant to the Construction General Permit, State Water Resources Control Board (SWRCB) Order Number 2009-0009-DWQ, as defined in Appendix 5, Glossary, and assumes all roles and responsibilities assigned to the Legally Responsible Person and the Approved Signatory Authority as mandated by the Construction General Permit.

55. COUNTY will provide a RESIDENT ENGINEER, licensed to practice Civil Engineering in the State of California, and construction support staff that are independent of the design engineering company and construction contractor.

56. IMPLEMENTING AGENCY will implement changes to the construction contract through contract change orders (CCOs). PARTNERS will review and concur on all CCOs over \$50,000. CALTRANS must approve all CCOs affecting public safety or the preservation of property, all design and specification changes, and all major changes as defined in the CALTRANS Construction Manual prior to implementing the CCO.
57. IMPLEMENTING AGENCY will use a CALTRANS-approved construction contract claims process, will administer all claims through said process, and will be available to provide advice and technical input in any claims process.
58. If the lowest responsible construction contract bid is greater than the funding commitment to CONSTRUCTION CAPITAL, all PARTNERS must be involved in determining how to proceed. If PARTNERS do not agree in writing on a course of action within 15 working days, the IMPLEMENTING AGENCY shall not award the construction contract.
59. COUNTY will require the construction contractor to furnish payment and performance bonds naming COUNTY as obligee, CALTRANS and CITY as additional obligee's, and to carry liability insurance in accordance with CALTRANS specifications. In the event that either CALTRANS or CITY determines that they intend to make a claim against the performance bond, the parties agree to meet and confer prior CALTRANS or CITY making said claim. In the event that either CALTRANS or CITY to pursue such claim against the construction performance bond after they meet and confer, they CALTLRANS and CITY hereby agree that COUNTY is relieved of its performance obligation to complete the PROJECT.
60. COUNTY will submit a written request to CALTRANS for any SFM identified in the PROJECT plans, specifications, and estimate a minimum of 45 days prior to the bid advertisement date for PROJECT construction contract. COUNTY will submit a written request to CALTRANS for any additional SFM deemed necessary during PROJECT construction.
61. CALTRANS will make SFM available at a CALTRANS-designated location after COUNTY requests SFM and pays CALTRANS' invoice for actual SFM costs.
62. COUNTY will prepare a QMP which will include a description of how source inspection will be performed and will submit the QMP to CALTRANS for review and approval by the State Materials Engineer.

CALTRANS will issue the parent permit to COUNTY upon submittal of a complete encroachment permit application. The parent permit will cite approval of the QMP by CALTRANS as a condition of issuing the double permit.

CALTRANS will issue the double permit to the contractor upon submittal of a complete encroachment permit application and all conditions cited in the parent permit have been met.

COUNTY will provide, or cause to provide, source inspection services.

63. As IMPLEMENTING AGENCY for CONSTRUCTION, COUNTY is responsible for maintenance within PROJECT limits as part of the construction contract.
64. CITY and CALTRANS will execute a separate maintenance agreement prior to OBLIGATION COMPLETION.

COST

Cost: General

65. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS COST.
66. CALTRANS, independent of PROJECT, will pay or cause to be paid all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.
67. CITY and COUNTY, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside of the existing SHS right of way.
68. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.
69. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS COST.
70. The cost to ensure that PROJECT remains in environmental compliance is an OBLIGATIONS COST.
71. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS COST.
72. Independent of OBLIGATIONS COST, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.
73. Independent of OBLIGATIONS COST, CITY will fund the cost of IQA for WORK done outside existing or proposed future SHS right of way.

- 74. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
- 75. Fines, interest, or penalties levied against a PARTNER will be paid, independent of OBLIGATIONS COST, by the PARTNER whose actions or lack of action caused the levy.
- 76. CALTRANS will administer all federal subvention funds identified on the FUNDING SUMMARY.
- 77. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS COST only after those hired by PARTNERS to participate in OBLIGATIONS incur and pay those costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Personnel Administration (DPA) rules current at the effective date of this agreement.

If LOCAL AGENCIES invoice for rates in excess of DPA rates, LOCAL AGENCIES will fund the cost difference and reimburse CALTRANS for any overpayment.

- 78. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds are subject to the current Program Functional Rate. Local funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and the Administration Rate are adjusted periodically.
- 79. If CALTRANS reimburses CITY for any costs later determined to be unallowable, CITY will reimburse those funds.
- 80. If CALTRANS reimburses COUNTY for any costs later determined to be unallowable, COUNTY will reimburse those funds.
- 81. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS cost.
- 82. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a project component, if there are insufficient funds available in this agreement to place the right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

83. If there are insufficient funds in this agreement to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTNER implementing commitments or conditions accepts responsibility to fund these activities, as they apply to each PARTNER's responsibilities, until such time as PARTNERS amend this agreement.

Each PARTNER may request reimbursement for these costs during the amendment process.

84. PARTNERS will pay invoices within 30 calendar days of receipt of invoice.

Cost: Environmental Permits, Approvals and Agreements

85. The cost of coordinating, obtaining, complying with, implementing, and if necessary renewing and amending resource agency permits, agreements, and/or approvals is an OBLIGATIONS COST.

Cost: CONSTRUCTION Support

86. The cost to maintain the SHS within PROJECT limits is an OBLIGATIONS COST until CITY and CALTRANS execute a separate maintenance agreement.

87. Each PARTNER listed below may submit invoices for CONSTRUCTION Support:

- COUNTY may invoice CITY
- CITY may invoice CALTRANS
- CALTRANS may invoice CITY

88. A deposit may or may not be put into place based on future agreement between COUNTY and CITY.

COUNTY will submit to CITY monthly invoices for estimated monthly costs based on the prior month's actual expenditures.

After PARTNERS agree that all WORK is complete, COUNTY will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

89. CITY will submit to CALTRANS monthly invoices of actual expenditures.

After PARTNERS agree that all WORK is complete, CITY will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

90. CALTRANS will submit to CITY quarterly invoices for actual expenditures for approving the HMA JMF and concrete mixes as a CONSTRUCTION SUPPORT cost.

After PARTNERS agree that all WORK is complete, CALTRANS will submit a final accounting for approving the HMA JMF and concrete mixes. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments for approving the HMA JMF and concrete mixes.

Cost: CONSTRUCTION Capital

91. Each PARTNER listed below may submit invoices for CONSTRUCTION Capital:
 - CALTRANS may invoice CITY
 - COUNTY may invoice CITY
 - CITY may invoice CALTRANS

92. The cost of all SFM is a CONSTRUCTION Capital cost.

CALTRANS will invoice CITY for the actual cost of any SFM as a CONSTRUCTION Capital cost.

After PARTNERS agree that all WORK is complete, CALTRANS will submit a final accounting for all SFM costs. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

93. A deposit may or may not be put into place based on future agreement between COUNTY and CITY.

COUNTY will submit to CITY monthly invoices for estimated monthly costs based on the prior month's actual expenditures.

After PARTNERS agree that all WORK is complete, COUNTY will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

94. CITY will submit to CALTRANS monthly invoices of actual expenditures.

After PARTNERS agree that all WORK is complete, CITY will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

SCHEDULE

95. PARTNERS will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

GENERAL CONDITIONS

96. PARTNERS understand that this agreement is in accordance with and governed by the Constitution and laws of the State of California. This agreement will be enforceable in the State of California. Any PARTNER initiating legal action arising from this agreement will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this agreement resides, or in the Superior Court of the county in which PROJECT is physically located.

97. All OBLIGATIONS of CALTRANS under the terms of this agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.

98. Any PARTNER performing IQA does so for its own benefit. No one can assign liability to that PARTNER due to its IQA activities.

99. PARTNERS will meet the requirements of Government Code Section 8879.20 et al. (Proposition 1 legislation), the governor's Executive Order 2007-S-02-07, and the California Transportation Commission (CTC) program guidelines for the applicable account.

Right of way purchased using bond funds will become the property of CALTRANS, and any revenue from the sale of excess lands originally purchased with bond funds will revert to CALTRANS.

100. Neither CITY nor COUNTY nor any officer or employee thereof are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS and or its agents, under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement.

It is understood and agreed that, CALTRANS, to the extent permitted by law will defend, indemnify, and save harmless CITY and COUNTY and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this agreement.

101. Neither CALTRANS nor COUNTY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this agreement.

It is understood and agreed that, CITY, to the extent permitted by law will defend, indemnify, and save harmless CALTRANS and COUNTY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under this agreement.

102. Neither CALTRANS nor CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by COUNTY and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon COUNTY under this agreement.

It is understood and agreed that, COUNTY, to the extent permitted by law will defend, indemnify, and save harmless CALTRANS and CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by COUNTY and/or its agents under this agreement.

103. PARTNERS do not intend this agreement to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this agreement. PARTNERS do not intend this agreement to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.
104. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this agreement.

105. PARTNERS will not interpret any ambiguity contained in this agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.
106. A waiver of a PARTNER's performance under this agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this agreement does not constitute an amendment to or negate all other articles or sections of this agreement.
107. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
108. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within 30 calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.
109. PARTNERS will first attempt to resolve agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of CITY and COUNTY will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of OBLIGATIONS in accordance with the terms of this agreement. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.

Except for equitable relief, no PARTNER may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

PARTNERS will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides. The prevailing PARTNER will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this agreement or to enforce the provisions of this article including equitable relief.

110. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
111. If any provisions in this agreement are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other agreement provisions invalid, inoperative, or unenforceable, and PARTNERS will automatically sever those provisions from this agreement.

112. PARTNERS intend this agreement to be their final expression and supersede any oral understanding or writings pertaining to OBLIGATIONS.
113. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this agreement to include completion of those additional tasks.
114. PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
115. This agreement will terminate upon OBLIGATION COMPLETION or an amendment to terminate this agreement, whichever occurs first.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

116. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY, CEQA Designation Letter.

DEFINITIONS

CALTRANS – The California Department of Transportation

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

CEQA (California Environmental Quality Act) – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

CFR (Code of Federal Regulations) – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

CONSTRUCTION CAPITAL – See PROJECT COMPONENT.

CONSTRUCTION SUPPORT – See PROJECT COMPONENT.

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this agreement and in all amendments to this agreement.

COST – The responsibility for cost responsibilities in this agreement can take one of three assignments:

- **OBLIGATIONS COST** – A cost associated with fulfilling OBLIGATIONS that will be funded as part of this agreement. The responsibility is defined by the funding commitments in this agreement.
- **PROJECT COST** – A cost associated with PROJECT that can be funded outside of OBLIGATIONS. A PROJECT COST may not necessarily be part of this agreement. This responsibility is defined by the PARTNERS' funding commitments at the time the cost is incurred.
- **PARTNER COST** – A cost that is the responsibility of a specific PARTNER, independent of PROJECT.

FHWA – Federal Highway Administration

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at www.fhwa.dot.gov/topics.htm.

FUNDING PARTNER – A PARTNER that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTNER accepts responsibility to provide the funds identified on the FUNDING SUMMARY under its name.

FUNDING SUMMARY – The table that designates an agreement's funding sources, types of funds, and the PROJECT COMPONENT in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

GAAP (Generally Accepted Accounting Principles) – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

HM-1 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by PROJECT or not.

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The PARTNER responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

IQA (Independent Quality Assurance) – Ensuring that IMPLEMENTING AGENCY's quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan (QMP). IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another partner.

LOCAL AGENCIES - The term that collectively references all of non-CALTRANS signatory agencies to this agreement.

NEPA (National Environmental Policy Act of 1969) – The federal act that establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

OBLIGATION COMPLETION – PARTNERS have fulfilled all OBLIGATIONS included in this agreement, and all amendments to this agreement, and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

OBLIGATIONS – All responsibilities included in this agreement.

OBLIGATIONS COST – See COST.

OMB (Office of Management and Budget) – The federal office that oversees preparation of the federal budget and supervises its administration in Executive Branch agencies.

PARTNER – Any individual signatory party to this agreement.

PARTNERS – The term that collectively references all of the signatory agencies to this agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTNER's individual actions legally bind the other partners.

PROJECT – The undertaking to construct a Railroad Grade Separation Improvements and Interchange modifications on Sunset Avenue and Interstate 10 (I-10) in the City of Banning.

PROJECT COMPONENT – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT.
- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for PROJECT.
- **R/W (Right of Way) SUPPORT** – The activities required to obtain all property interests for PROJECT.
- **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for PROJECT.
- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for PROJECT.
- **CONSTRUCTION CAPITAL** – The funds for the construction contract.

PROJECT COST – See COST.

PROJECT MANAGEMENT PLAN – A group of documents used to guide a project's execution and control throughout that project's lifecycle.

QMP (Quality Management Plan) – An integral part of the Project Management Plan that describes IMPLEMENTING AGENCY's quality policy and how it will be used.

RESIDENT ENGINEER – A civil engineer licensed in the State of California who is responsible for construction contract administration activities. Said engineer must be independent of the design engineering company and the construction contractor.

SAFETEA-LU – Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

SCOPE SUMMARY – The attachment in which each PARTNER designates its commitment to specific scope activities within each PROJECT COMPONENT as outlined by the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

SHS (State Highway System) – All highways, right of way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

SPONSOR – Any PARTNER that accepts the responsibility to establish scope of PROJECT and the obligation to secure financial resources to fund PROJECT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT scope. If a PROJECT has more than one SPONSOR, funding adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

SFM (State Furnished Material) – Any materials or equipment supplied by CALTRANS.

WORK – All scope activities included in this agreement.

CONTACT INFORMATION

The information provided below indicates the primary contact data for each PARTNER to this agreement. PARTNERS will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this agreement.

The primary agreement contact person for CALTRANS is:

Emad Makar, Project Manager
464 West 4th Street, 6th Floor, (MS-1229)
San Bernardino, California 92401-1400
Office Phone: (909) 383-4978
Fax Number: (909) 383-6938
Email: emad.makar@dot.ca.gov

The primary agreement contact person for CITY is:

Kahono Oei, City Engineer
P.O. Box 998
Banning, California 92220
Office Phone: (951) 922-3130
Email: koei@ci.banning.ca.us

The primary agreement contact person for COUNTY is:

C. Scott Staley, Project Manager
4080 Lemon Street
Riverside, California 92502
Office Phone: (951) 955-2029
Email: CSTALEY@rctlma.org

SIGNATURES

PARTNERS declare that:

1. Each PARTNER is an authorized legal entity under California state law.
2. Each PARTNER has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

APPROVED

By: _____

Basem E. Muallem, P.E.
District Director

CERTIFIED AS TO FUNDS:

By: _____

Lisa Pacheco
Budget Manager

CITY OF BANNING

APPROVED

By: _____

Don Robinson
Mayor

By: _____

Marie A. Calderon
CITY Clerk

APPROVED AS TO FORM AND PROCEDURE

By: _____

Dave Alshire
CITY Attorney

COUNTY OF RIVERSIDE

APPROVED

By: _____

John F. Tavaglione
Chairman, Riverside County
Board of Supervisor

By: _____

Kecia Harper-Ihem
Clerk of the Board

APPROVED AS TO FORM AND PROCEDURE

By: _____

Pamela J. Walls
COUNTY Counsel

SCOPE SUMMARY

4	5	6	7	8	Description	CALTRANS	CITY	COUNTY	N/A
5	270				Construction Engineering and General Contract Administration			X	
		10			Construction Staking Package and Control			X	
		10			Construction Staking Package			X	
		20			Project Control for Construction			X	
		15			Construction Stakes			X	
		15			Slope Stakes			X	
		25			Rough Grade Stakes			X	
		30			Final Grade Stakes			X	
		35			Drainage and Minor Structure Stakes			X	
		50			Miscellaneous Stakes			X	
		55			Photogrammetric Product for Construction			X	
		60			Ground Stakes for Major Structure			X	
		65			Superstructure Stakes for Major Structure			X	
		20			Construction Engineering Work			X	
		05			Resident Engineer's File Review			X	
		10			Project Plans, Special Provisions, and Estimate Review			X	
		15			Contract Pay Quantities			X	
		20			Lines and Grades Control			X	
		25			Contractors' Falsework Submittals Review			X	
		30			Contractors' Trenching and Shoring Submittals Review			X	
		35			Shop Plans Review			X	
		40			Cost Reduction Incentive Proposals Review			X	
		45			Contractors' Water Pollution Control Program Review			X	
		50			Technical Support			X	
		99			Other Construction Engineering Products			X	
		25			Construction Contract Administration Work			X	
		05			Secured Lease for Resident Engineer Office Space or Trailer			X	
		10			Set Up Construction Project Files			X	
		15			Pre-Construction Meeting			X	
		20			Progress Pay Estimates			X	
		25			Weekly Statement of Working Days			X	
		30			Construction Project Files and General Field Office Clerical Work			X	
		35			Labor Compliance Activities			X	
		40			Approved Subcontractor Substitutions			X	

			45	Coordination			X	
			50	Civil Rights Contract Compliance			X	
			99	Other Construction Contract Administration Products			X	
			30	Contract Item Work Inspection			X	
			05	Photographed Jobsite and Contractors' Operations			X	
			10	Inspection of Contractors' Work for Compliance			X	
			15	Contractors' Operations Relative to Safety Requirements Documentation			X	
			20	Daily Diary of Contract Operations			X	
			25	Punch List			X	
			35	Construction Material Sampling and Testing			X	
			05	Materials Sampling and Testing for Quality Assurance			X	
			10	Plant Inspection for Quality Assurance			X	
			15	Independent Assurance Sampling and Testing			X	
			20	Source Inspection			X	
			40	Safety and Maintenance Reviews			X	
			45	Relief From Maintenance Process			X	
			55	Final Inspection and Acceptance Recommendation			X	
			60	Plant Establishment Administration			X	
			65	Transportation Management Plan Implementation During Construction			X	
			80	Long-Term Environmental Mitigation/Mitigation Monitoring During Construction Contract			X	
			99	Other Construction Engineering and General Contract Administration			X	
5	275			Construction Engineering and General Contract Administration of Structures Work			X	
			10	Office Administration Work for Structures			X	
			20	Field Administration Work for Structures			X	
			30	Contract Change Order Inspection for Structures Work			X	
			40	Safety Tasks for Structures Work			X	
5	285			Contract Change Order Administration			X	
			05	Contract Change Order Process			X	
			10	Functional Support			X	
5	290			Resolve Contract Claims			X	
			05	Analysis of Notices of Potential Claims			X	
			10	Supporting Documentation and Responses to Notices of Potential Claims			X	
			15	Reviewed and Approved Claim Report			X	
			20	District Claim Meeting or Board of Review			X	
			25	Arbitration Hearing			X	
			30	Negotiated Claim Settlement			X	
			35	Technical Support			X	
5	295			Accept Contract, Prepare Final Construction Estimate, and Final Report			X	
			05	Processed Estimate After Acceptance			X	
			10	Proposed Final Contract Estimate			X	
			15	As-Built Plans			X	
			20	Project History File			X	
			25	Final Report			X	
			30	Processed Final Estimate			X	

		35		Certificate of Environmental Compliance			X	
		40		Long Term Environmental Mitigation/Mitigation Monitoring After Construction Contract Acceptance		X		
		45		Post-Construction Traffic Operations Activities		X		
		99		Other Accept Contract/ Prepare Final Construction Estimate and Final Report			X	
4	300			FINAL RIGHT OF WAY ENGINEERING			X	
		05		Right of Way Monumentation			X	
		10		Trial Exhibits and Testimony			X	
		25		Relinquishment and Vacation Maps			X	
		30		Deed Package for Excess Land Transactions			X	
		35		Right of Way Record Map			X	

FUNDING SUMMARY

Funding Source	Funding Partner	Fund Type	CON Capital	CON Support	Support Subtotal	Capital Subtotal	Subtotal Funds Type
STATE	CITY	Trade Corridor Improvement Funds	\$9,600,000	\$400,000	\$400,000	\$9,600,000	\$10,000,000
FEDERAL	CITY	DEMO-SAFE TEA-LU	\$1,600,000	\$0	\$0	\$1,600,000	\$1,600,000
FEDERAL	CITY	Projects for National and Regional Significance (PNRS)	\$7,500,000	\$0	\$0	\$7,500,000	\$7,500,000
FEDERAL	CITY	Surface Transportation Program Local	\$1,482,000	\$0	\$0	\$1,482,000	\$1,482,000
		Subtotals by Component	\$27,082,000	\$3,500,000	\$3,500,000	\$27,082,000	\$30,582,000

*Includes CALTRANS costs for the supply of State Furnished Material.

**Includes CALTRANS costs for Approving HMA JMF and concrete mixes estimated cost at \$25,000 support.

CITY COUNCIL AGENDA

DATE: February 12, 2013

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2013-19, "Approving a Professional Services Agreement with Albert A. Webb Associates for Engineering and Design Services for the Modification and Expansion of the City Corporate Yard"

RECOMMENDATION: Adopt Resolution No. 2013-19:

- I. Approving a Professional Services Agreement with Albert A. Webb Associates for Engineering and Design Services for the Modification and Expansion of the City Corporate Yard for an amount "Not to Exceed" \$86,600.00.
- II. Authorizing the City Manager to execute the Professional Services Agreement with Albert A. Webb Associates of Riverside, California with Albert A. Webb Associates of Riverside, California.

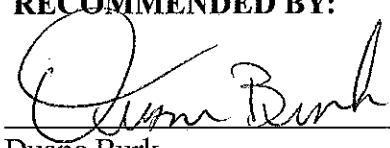
JUSTIFICATION: It is necessary to award a contract to Albert A. Webb Associates for Engineering and Design Services for the Modification and Expansion of the City Corporate Yard.

BACKGROUND: City staff is planning to redesign and expand the existing 11+ acre Corporate Yard located at 176 E. Lincoln St. The reconstruction of the site is proposed in two (2) phases. Phase 1 is to include the demolition of the existing Electric Operations Building (and other possible structures) to be replaced with a new building in its general location. Phase 2 consists of the construction of a new building along with associated paving, parking, etc., located in the currently undeveloped southwestern portion of the Corporate Yard.

This project will require the preparation of a grading plan, on-site water and sewer plan, and will have to comply with the Colorado River Basin Regional Water Quality Control Board "MS4" permit and implementation of Best Management Practices (BMP's). The primary scope of services includes aerial topographic mapping, field topographic survey, field exploration, laboratory testing, engineering analyses and report, grading reports, water quality analysis, and final design services for demolition, grading, paving, and drainage plans, prepare Water Quality management Plan (WQMP) and Storm Water Pollution Prevention Plan (SWPPP), and assist with meeting coordination (see attached Exhibit "A" for the full scope of services).

FISCAL DATA: An appropriation is not needed to fund this professional services agreement. Account No. 674-7000-473.90-11 (New Building City Yard) currently has a balance of \$2,679,650.00.

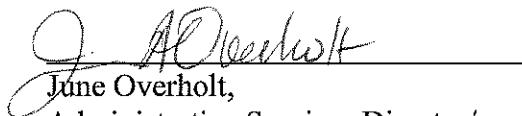
RECOMMENDED BY:


Duane Burk,
Director of Public Works

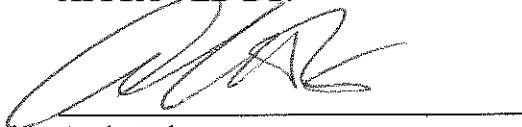
RECOMMENDED BY:


Fred Mason,
Electric Utility Director

REVIEWED BY:


June Overholt,
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata,
City Manager

RESOLUTION NO. 2013-19

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,
APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ALBERT A. WEBB
ASSOCIATES FOR ENGINEERING AND DESIGN SERVICES FOR THE
MODIFICATION AND EXPANSION OF THE CITY CORPORATE YARD**

WHEREAS, City staff has identified the need to redesign and expand the existing 11+ acre Corporate Yard located at 176 East Lincoln Street; and

WHEREAS, reconstruction of the site is proposed in two (2) phases: Phase 1 is to include the demolition of the existing Electric Operations Building (and other possible structures) to be replaced with a new building in its general location; Phase 2 consists of the construction of a new building along with associated paving, parking, etc., located in the currently undeveloped southwestern portion of the Corporate Yard; and

WHEREAS, it is necessary to award a contract to Albert A. Webb Associates for Engineering and Design Services for the Modification and Expansion of the City Corporate Yard; and

WHEREAS, Account No. 674-7000-473.90-11 (New Building City Yard) will be used to fund this Professional Services Agreement and currently has a balance of \$2,679,650.00.

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

SECTION 1. The City Council adopts Resolution No. 2013-19 approving a Contract Services Agreement with Albert A. Webb Associates for an amount "Not to Exceed" \$86,600.00.

SECTION 2. The City Manager is hereby authorized to execute the Agreement with Albert A. Webb Associates for engineering design 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 12th day of February, 2013.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon,
City Clerk, City of Banning

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-19 was duly adopted by the City Council of the City of Banning at the regular meeting thereof held on the 12th day of February, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following Services:

Task 1 – Survey, Mapping, and Aerial Topography Services

A. Boundary Survey

- a. Coordinate with Title Company and obtain a preliminary title report for the property.
- b. Research and compile all available reference materials from record pertaining to the property, including reference Record Maps, Corner records, Tie Sheets, Vesting Deeds, Right-of Way Deeds and Documents.
- c. Perform field survey to locate and verify existing monuments.
- d. Prepare boundary survey based on record data obtained.

B. Aerial Topographic Mapping

- a. Set ground control and aerial targets for mapping and data collect any relevant detailed features
- b. Provide a $1" = 40'$ scale digital aerial topographic survey of property, including 100' beyond property lines.

C. Field Topographic Survey

- a. Perform site field survey and data collection of existing site terrain and features relevant to site design (budget assumes two (2) full days of field survey).
- b. Compile and process field topographic data for use in site design.

Task 2 – Preliminary Engineering

A. Geotechnical Investigation

- a. Field Exploration to explore the subsurface conditions by drilling seven (7) test borings to a depth of 25 to 50 feet (or refusal) at the site with a conventional hollow-stem auger drill rig. Undisturbed and disturbed soil samples will be recovered for laboratory testing.
- b. Standard Penetration Tests (SPT) in accordance with ASTM procedure DI 586 will be conducted. Staff engineer or geologist will maintain a continuous log of the soils encountered and obtain samples for visual classifications and subsequent laboratory testing.

- c. Perform two (2), infiltration tests, at 4 feet deep, at random locations in the proposed on-site storm-water retention basin locations.

B. Laboratory Testing

- a. In-situ samples will be recovered to perform the following:
 - i. Moisture Content & Unit Weight
 - ii. Maximum Density & Optimum Moisture
 - iii. Sieve Analysis
 - iv. Direct Shear
 - v. Collapse Potential
 - vi. Corrosion Potential

C. Engineering Analyses and Report

- a. Provide four (4) bound copies of the geotechnical report that describes the work performed, the subsurface soils conditions encountered, and presents the findings, along with professional opinions regarding project design. G. Prepare signing and striping plan.

D. Preliminary Grading

- a. Review Preliminary Geotechnical Report and incorporate recommendations into site design
- b. Prepare preliminary grading layout and estimated grading quantities
- c. Coordinate preliminary grading layout with anticipated drainage and water quality features

E. Preliminary Water Quality Analysis

- a. Review architect's layout, preliminary grading layout, preliminary Geotechnical Report and infiltration testing results to determine infiltration rates and provide options for treating storm water
- b. Provide recommendations on LID features for treating storm water quality in accordance with the hierarchy established in the new storm water MS4 Permit. Recommendations may result in changes being required to the site layout
- c. Assist Design Team with site modifications necessary to be in compliance with water quality regulations.

F. Preliminary Drainage Calculations

- a. Prepare preliminary hydrology analysis to determine projects pre-development and post development run-off volumes
- b. Prepare preliminary hydraulic calculations to determine approximate size and location for proposed drainage pipe networks
- c. Review adjacent off-site drainage facilities to determine adequacy to accept project run-off

G. Utility Research

- a. Coordinate with the City to obtain information regarding the location and sizes of existing utilities adjacent to and within the project site
- b. Utilize the acquired information to prepare a composite utility plan delineating the locations of existing sewer, water, drainage, and dry utility facilities

Task 3 – Final Design Services

A. Demolition Plan

- a. Provide a demolition plan identifying the area and facilities to be demolished in conjunction with the work proposed in that phase

B. Horizontal Control and Paving Plan

- a. Provide a horizontal control plan to include pertinent site dimensions and setbacks for the proposed buildings, curbs, gutters, sidewalk, planters, parking stalls, etc. for each phase
- b. Provide a paving plan to include construction notes and details to allow for the installation of the proposed asphalt pavement, concrete pavement, curbs, gutters, sidewalks, planters, etc.
- c. Pavement Structural Sections will be provided by the Geotechnical Consultant and incorporated into the design drawings

C. Grading Plan

- a. Provide a detailed site grading plan including vertical elevations for building pad/finish floor, to of curb, gutter flow line, driveways, and pavement placement
- b. Provide estimate of grading quantities and site balance calculations based on the factor contained in the project's preliminary Geotechnical Report. A "wet signed" copy of said report will be required to be provided to the City with the submittal of the grading plan.

D. Drainage Plan

- a. Provide final on-site storm drain facility design based on refinement of the preliminary site design and drainage calculations
- b. Provide on-site water quality and detention basin design based on the approved Preliminary Water Quality Management Plan (P-WQMP) and refined drainage calculations

E. Erosion Control Plan

- a. Provide and erosion control plan in conformance with State Water Resources Control Board and County of Riverside requirements to include construction BMP placement and details along with storm water discharge locations. The erosion control plan will be prepared based on the project being assessed as a risk Level 1

F. Utility Plan

- a. Coordinate with City, architect, and design team to determine required flow rates and points of connection (POC's) for domestic water services, irrigation water services, and waste disposal laterals
- b. Provide a single unified utility plan delineating necessary information for the installation of domestic water services, irrigation services, and waste disposal laterals from public POC to within 5' of the proposed buildings. Additional underground utility information from other consultants will be delineated (for reference only) based on their availability

G. Quantity and Cost Estimates

- a. Provide quantity take-off and lineate information on design plans
- b. Prepare probable cost estimates for civil related construction shown on our plans

H. Final Drainage Study

- a. Provide updated drainage study based on the final grading layout and previously prepared preliminary drainage calculations
- b. Provide updated hydraulic calculations for final sizing of underground drainage facilities
- c. Provide hydraulic calculations for water quality basin outlet structures
- d. Provide final drainage report for agency review and concurrence with design

I. Final Water Quality Management Plan (F-WQMP)

- a. Prepare a Final Water Quality Management Plan based on regional standards and the approved Preliminary Water Quality Management Plan (P-WQMP)
- b. Provide LID's and BMP's to meet new MS4 Permit requirements
- c. Provide required drawings to show LID and BMP installation information

J. Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI)

- a. Coordinate with the City for registration under the State "SMARTS" program
- b. Prepare and upload project data into the "SMARTS" program for filing of the State required NOI and assist the City with the certification process
- c. Prepare a Site Risk Level Assessment
- d. Provide a "risk Level 1" storm water pollution prevention plan per State Water Resources Control Board requirements

K. Meetings, Coordination, and Project Management

- a. Participate in coordination meetings, phone calls, emails, etc. with City, Architect, and Design Team (budget assumes 20 hours of coordination)
- b. Attendance at meetings with City to clarify design issues (budget assumes a maximum of 4 – two hour meetings with City)
- c. Processing of Webb plans and documents through City for approval (budget assumes two plan check/review submittal of documents to the City)

EXHIBIT "B"
BILLING RATES

All work shall be billed on a "lump sum" basis, not to exceed the amount indicated below without prior authorization from the City of Banning. Total compensations for the services shown in our Scope of Services (Exhibit "A") shall be **\$86,600**. Charges for services will be billed monthly on a percent complete basis. This overall budget is based on the breakdown for services noted below:

Survey, Mapping and Aerial Topography Services

Boundary Survey	\$ 4,000
Aerial Topographic Mapping	\$ 3,400
Field Survey	\$ 3,100
Preliminary Title Report	\$ 3,000
Subtotal (A)	\$13,500

Preliminary Engineering Services

Geotechnical Investigation	\$ 8,900
Preliminary Grading	\$11,500
Preliminary Water Quality Analysis	\$ 6,000
Preliminary Drainage Calculations	\$ 4,800
Utility Research	\$ 2,800
Subtotal (B)	\$34,000

Final Design Services

Demolition Plan	\$ 2,200
Horizontal Control and Paving Plan	\$ 2,500
Grading Plan	\$ 4,400
Drainage Plan	\$ 2,700
Erosion Control Plan	\$ 1,500
Utility Plan	\$ 2,500
Quantity and Cost Estimates	\$ 900
Final Drainage Study	\$ 3,100
Final Water Quality Management Plan (F-WQMP)	\$ 6,100
Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI)	\$ 3,400
<u>Meetings, Coordination, and Project Management</u>	\$ 7,300
Subtotal (C)	\$36,000

Reimbursable Expenses \$ 2,500

TOTAL **\$86,600**

ALBERT A. WEBB ASSOCIATES

SCHEDULE OF HOURLY RATE
Effective January 1, 2013 - December 2013

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal Engineer	\$198/hr.
Project Manager	\$190/hr.
Project Engineer	\$173/hr.
Senior Designer	\$149/hr.
2-Person Survey Crew	\$212/hr.
Administrative Assistant	\$ 72/hr.
Mileage	\$0.77/ mile
Reproduction and Printing	= Actual cost plus 10%

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**CITY COUNCIL AGENDA
RECEIVE AND FILE**

DATE: February 12, 2013

TO: Honorable Mayor and City Council

FROM: Heidi Meraz, Community Services Director

SUBJECT: Staff Report – Stagecoach Days In-Kind Services

The Stagecoach Days Committee has begun planning for Stagecoach Days 2013, which will be held at A.C. Dysart Park September 6th, 7th and 8th. In order to create a successful event, the committee depends upon the support of the city with a contribution in-kind services. Council action of November 9, 2010 provided authorization of in-kind services not to exceed \$14,000.00 through the close of the 2013 event.

For over 50 years, Stagecoach Days has been an annual citywide celebration of Banning's history as a stagecoach stop on the Colorado Stage and Express Line. It has become the "signature event" for the City of Banning. The event serves as a community-building tool, bringing community members together, and as an economic driver, assisting with City name recognition and drawing people to the community to spend money.

Over the years, Stagecoach Days has been organized and operated by various organizations. Prior to 2007, the Chamber of Commerce had produced the event. In January 2007 the Chamber stepped away from producing the event, stating their desire to focus on more chamber-like activities. The city produced the 2007 event in-house with the assistance of volunteers and in subsequent years the Stagecoach Days has been organized by an independent committee.

Historically, Stagecoach Days was a weeklong special event culminating in a four-day carnival and three-day rodeo which were held at A.C. Dysart Park. In an effort to reduce costs and increase profits, the current committee has made the decision to reduce the events held at A.C. Dysart Park to three days beginning in 2011.

Stagecoach Days is a major special event requiring a substantial volunteer workforce, as well as financial and in-kind contributions.

Stagecoach Days has existed as long as it has due to the commitment of many unnamed volunteers who have given a significant amount of their time to planning and implementing the numerous details that allows this event to occur. Without their continued efforts, there would not be a Stagecoach Days.

Stagecoach Days, as it is operated now, (excluding the events sponsored by community organizations) is a \$50,000 - \$70,000 event. Event admission, ticket sales, registration

fees, food and alcohol sales, arena advertising and vendor fees cover roughly half of the event's total costs, with sponsorships covering the balance. As proven by the current committee, the event can generate sufficient funds to cover the production costs. However, without the in-kind support being given by the city, a deficit would most likely be incurred.

The City has been a long-time financial supporter of Stagecoach Days. In-kind services have always been provided by the city and cash contributions during some years were as high as \$20,000.00, however, for the past two years no cash contribution has been given. Past records show that in-kind support costs for the five years prior to the 2012 event averaged approximately \$19,000. Each of those years police security accounted for over the half of the total costs of services provided by the city. As indicated the Attached is a break-down of in-kind services that were provided for this year's event.

PREPARED BY:


Heidi Meraz

Community Services Director

APPROVED BY:


Andrew J. Takata

City Manager

REVIEWED BY:


June Overholt

Deputy City Manager/
Administrative Services Director

Attachments:

1. Exhibit "A" – Cost of In-Kind Services, Stagecoach Days 2012

STAGECOACH DAYS 2012

City Provided In-Kind Services

Stagecoach Days Parade

Streets/Parks Division	Barricades/Street Signs	648.00
Police Department	Traffic Control	1,276.50
Community Services	Parade Applications	504.00
Fire Department	Estimated Inspection Fees	<u>160.00</u>
Total Parade Cost		\$2,588.50

Rodeo/Carnival

Streets/Parks Division	Barricades/Street Sign	126.00
Street/Parks Division	Arena Prep/Clean-up	1,062.00
Police Department	Event Security	2,340.00
Community Services	Assistance w/ event	1,152.00
Electric Department	Parade, carnival & rodeo	3,098.00
Water Department	Estimated cost of water used event only	460.00
Fire Department	Estimated Inspection Fees	<u>240.00</u>
Total Rodeo/Carnival Cost		\$8,478.00
Total In-Kind Services		\$11,066.50

CITY COUNCIL MEETING

DATE: February 6, 2013

TO: Mayor and City Council

FROM: Andy J. Takata, City Manager

SUBJECT: *Dill Lumber Co. v. City of Banning, et al.*
(Riverside County Superior Court Case No. RIC 1100544)

RECOMMENDATION: That the City Council accept the settlement amount of \$55,000 in exchange for a dismissal of the City with prejudice.

BACKGROUND: This lawsuit arose from a contract dispute regarding a commercial lease executed by and between the City and Dill Lumber from May 2006 through April 2010. During the construction of the City's current police station, the City leased a commercial building and adjacent parking lot located at 321 W. Ramsey Street in the City of Banning (the "Property") for use as a temporary police station.

Dill Lumber alleges that the City breached the lease agreement by failing to perform the following duties upon vacation of the Property: (1) removal of the tenant improvements installed by the City at the commencement of the lease; (2) restoration of the terrazzo flooring inside the lobby of the building; (3) maintenance and repair of the adjacent parking lot; and (4) the giving of 90 days advance notice prior to vacation.

It was the City's position that the City abided by the terms of the Lease and provided Dill Lumber with proper notice of vacancy as required by law and under the terms of the Lease. Furthermore, Dill Lumber's failure to advise the City regarding the condition in which the Property and tenant improvements were to be surrendered constituted a waiver to its right to seek removal costs of the tenant improvement, and the costs for flooring restoration. With respect to the parking lot, the City contended that the alleged parking lot restoration costs were unreasonable and unwarranted because Dill Lumber sought the cost of a new parking lot, not the cost of repairing or maintaining the existing lot.

DISCUSSION: Trial was set to commence on December 14, 2012. The estimated attorney's fees and costs for trial to defend the City were approximately \$20,000. Dill Lumber sought \$89,157.50 in costs, as well as attorney's fees and costs. Assuming the worst case scenario, the exposure to the City could have been in excess of \$110,000.

Throughout the litigation of this case, the parties engaged in multiple negotiations in an attempt to settle this case. The City made a statutory offer of settlement of \$50,000.00 which allowed the City to recover costs in the event the case went to trial and Dill Lumber obtained a less favorable judgment than \$50,000. Plaintiff rejected this offer. Upon further negotiation, Dill Lumber agreed to accept \$55,000.

The settlement agreement calls for the payment by the City to Plaintiff of \$55,000 for a release of all claims arising out of the City's tenancy at 321 W. Ramsey, Banning, CA. In return, Plaintiff will dismiss the entire lawsuit against the City. This figure is less than one-half of the City's exposure in this case.

FISCAL DATA: \$55,000.00.

Prepared by:
Aleshire & Wynder, LLP

REVIEWED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

Attachment: Executed Settlement Agreement

SCOTT SHOWLER
Attorney at Law
1839 Commercenter West
San Bernardino, CA 92408
(909) 793-2377
Fax (909) 388-1889

January 8, 2013

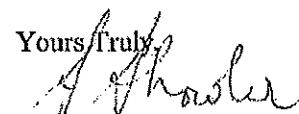
Mily C. Huntley, Esq.
Aleshire & Wynder, LLP
2361 Rosecrans Ave., Suite 475
El Segundo, CA 90245

Re: Dill Lumber v. City of Banning

Dear Ms. Huntley:

Pursuant to our recent communications, enclosed please find a Settlement Agreement & Release of Claims and form W-9 regarding the above matter. The settlement agreement has been fully initialed and signed on behalf of Dill Lumber, and signed by me. These items are delivered to you in trust, to be used only upon payment of the amount provided for in the settlement agreement. Along with the payment, please provide me with a fully initialed and signed copy of the settlement agreement.

In accordance with the provisions of the settlement agreement, I will of course promptly file a dismissal with prejudice following payment. As previously expressed to you, it is my hope that payment can be accomplished fast enough that a further court appearance can be avoided in the matter. Please advise promptly if there are any matters not covered by this letter or the enclosures.

Yours truly,

Scott Showler, Esq.

encl
cc: client

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SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (the "AGREEMENT") is entered into by and among Plaintiff, DILL LUMBER COMPANY, a California corporation, ("PLAINTIFF") on one hand, and Defendant CITY OF BANNING, a municipal corporation ("CITY") on the other hand (PLAINTIFF and CITY are referred to herein as the "PARTIES", and individually as a "PARTY"), to terminate fully and finally all disputes arising out of, or related to, the LAWSUIT (defined hereinafter).

RECITALS

WHEREAS, on May 10, 2006, the PARTIES entered into a commercial lease (the "LEASE"). The CITY leased from PLAINTIFF a commercial building and adjacent parking lot located at 321 W. Ramsey Street in the City of Banning (the "PREMISES") for use as a temporary police station; and

WHEREAS, the initial term of the LEASE was from May 2006 to August 2007 at a monthly rate of \$5,500; and

WHEREAS, the CITY contends that the LEASE was extended until August 2008 through the agreement of the parties and thereafter held over until April 2010 paying \$10,000 per month in consideration thereof; and

WHEREAS, on April 1, 2010, and believing it held a month-to-month tenancy, the CITY gave PLAINTIFF a written 30 day notice to vacate the PREMISES; and

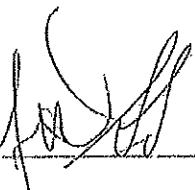
WHEREAS, PLAINTIFF contends that a 90 day notice was required; and

WHEREAS, a dispute arose between the PARTIES as to the alleged defective notice, and the condition of the commercial building and adjacent parking, and the PARTIES' duties pursuant to the Lease (the "DISPUTE"); and

WHEREAS, on or about January 13, 2011, PLAINTIFF filed a complaint for breach of contract in the Riverside County Superior Court, *Dill Lumber Co. v. City of Banning*, Riverside Superior Court Case No. RIC100544 (the "LAWSUIT"); and

WHEREAS, the PARTIES wish to enter into a settlement whereby CITY agrees to make one payment totaling \$55,000.00 to PLAINTIFF; and

WHEREAS, the PARTIES agree to resolve, fully and finally, all remaining disputes concerning the LAWSUIT.

Initials: 

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AGREEMENT

The above Recitals are incorporated by reference as if set forth in full herein.

NOW, THEREFORE, for full and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, all PARTIES hereto agree as follows:

1. **Settlement Payment.** Following the execution of this AGREEMENT by the PARTIES, and execution by their respective counsel, CITY shall pay PLAINTIFF the amount of Fifty Five Thousand Dollars and No Cents (\$55,000.00) as full and final settlement of the LAWSUIT. The payment referred to as the "SETTLEMENT SUM" constitutes a full and complete settlement and compromise of the LAWSUIT and of all disputed claims arising out of or related to the DISPUTE and the LAWSUIT between the PARTIES. Payment will be made through a check made payable to "Dill Lumber Co."

2. **Dismissal of Action.** PLAINTIFF shall cause the LAWSUIT to be dismissed in its entirety against CITY, with prejudice, with all PARTIES to bear their own costs and attorneys' fees, within seven (7) calendar days of notice of execution of this AGREEMENT and payment of the SETTLEMENT SUM to PLAINTIFF.

3. **Mutual Release.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, CITY and PLAINTIFF do hereby release and forever discharge each other and their respective "Releasees" hereunder, consisting of their respective board members, officers, agents, owners, trustors, settlors, trustees, members, employees, attorneys, co-owners, spouses, and/or any other person(s) acting on their behalf of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, losses, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "CLAIMS"), which the PARTIES now have or may hereafter may have against each other and/or the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof including, without limiting the generality of the foregoing, the LAWSUIT as well as any matters, causes, or things whatsoever that were, or have been, could in any way have been, alleged in the LAWSUIT.

4. **Release of Unknown Claims.** The PARTIES intend and agree that the Release set forth above in Paragraph 3 of this AGREEMENT is to be interpreted as broadly as possible, and is a release of ALL claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Release and is intended to encompass all known and unknown, foreseen and unforeseen claims which the PARTIES may have as a result of the LAWSUIT, except for any claims which may arise from the terms of this AGREEMENT.

5. **Waiver of Civil Code Section 1542.** Further, the PARTIES expressly agree to waive and relinquish all rights and benefits they may respectively have against each other and the Released PARTIES under Paragraph 3 of this AGREEMENT based on Section 1542 of the *Civil Code* of the State of California. That section reads as follows:

" §1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

CITY's initials: 

PLAINTIFF's initials: 

6. **Discovery Of Different Or Additional Facts.** The PARTIES acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of this AGREEMENT, and expressly agree to assume the risk of the possible discovery of additional or different facts, injuries, damages and/or claims and the PARTIES agree that this AGREEMENT shall be and remain effective in all respects regardless of such additional or different facts, injuries, damages and/or claims.

7. **Non-Acknowledgment of Liability.** The PARTIES acknowledge and agree that this AGREEMENT is a settlement of disputed claims. Neither the fact that the PARTIES have settled nor the terms of this AGREEMENT shall be construed in any manner as an admission of any liability by any PARTY hereto, or any of its employees, or an affiliated person(s) or entity/ies, including the CITY's attorneys, all of whom have consistently taken the position that they have no liability whatsoever to the other PARTIES.

8. **No Assignment Of Claims.** The PARTIES each warrant that they have made no assignment, and will make no assignment, of any claim, chose in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

9. **Successors And Assigns.** This AGREEMENT, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the PARTIES and their respective heirs, legal representatives, successors, officers, owners, members and assigns.

10. **Knowing And Voluntary.** This AGREEMENT is an important legal

document and in all respects has been voluntarily and knowingly executed by the PARTIES hereto. The PARTIES specifically represent that prior to signing this AGREEMENT they have been provided a reasonable period of time within which to consider whether to accept this AGREEMENT. The PARTIES further represent that they have each carefully read and fully understand all of the provisions of this AGREEMENT, and that they are voluntarily, knowingly, and without coercion entering into this AGREEMENT based upon their own judgment.

11. Assistance Of Counsel. The PARTIES each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this AGREEMENT concerning the terms and conditions of this AGREEMENT.

12. Counterparts. This AGREEMENT may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

13. Singular And Plural. Whenever required by the context, as used in this AGREEMENT the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

14. Enforcement Costs. Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing PARTY in such action shall be entitled to reasonable attorneys' fees and costs pertaining to such action, in addition to any other relief to which that PARTY may be entitled.

15. Severability. Should any portion, word, clause, phrase, sentence or paragraph of this AGREEMENT be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

16. Headings. Headings at the beginning of each numbered section of this AGREEMENT are solely for the convenience of the PARTIES and are not a substantive part of this AGREEMENT.

17. Ambiguity. The PARTIES acknowledge that this AGREEMENT was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the PARTIES, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

18. Waiver. Failure to insist on compliance with any term, covenant or condition contained in this AGREEMENT shall not be deemed a waiver of that

term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this AGREEMENT at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

19. Governing Law. This AGREEMENT is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles.

20. Entire Agreement. This AGREEMENT constitutes the entire agreement between the PARTIES who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the PARTIES to this AGREEMENT for the subject matter herein. The PARTIES to this AGREEMENT each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this AGREEMENT, that they have not executed this AGREEMENT in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this AGREEMENT, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this AGREEMENT shall be valid or binding, unless executed in writing by all of the PARTIES to this AGREEMENT.

21. Modifications. Any alteration, change, or modification of or to this AGREEMENT shall be made by written instrument executed by the PARTIES hereto in order to become effective.

22. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this AGREEMENT (either express or implied) is intended to confer upon any person or entity that is not a party to this AGREEMENT any rights, remedies, obligations or liabilities under or by reason of this AGREEMENT.

23. Authority To Sign. The person executing this AGREEMENT on behalf of PLAINTIFF hereto warrants 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 and to bind that PARTY, including its members, agents and assigns, (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.

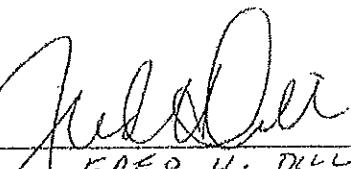
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have read, understand and agree to all of the above terms and conditions of this AGREEMENT, consisting of a total of 7 pages, by executing it on the dates set forth below.

Dated: December 27, 2012

DILL LUMBER COMPANY

By:



Name/Title: Fred H. Dill
PRESIDENT

Dated: _____, 2012

CITY OF BANNING

By:

Andy Takata, City Manager

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APPROVED AS TO FORM

For PLAINTIFF:

Dated: Jan 8, ²⁰¹³
2012

LAW OFFICE OF SCOTT SHOWLER

By:



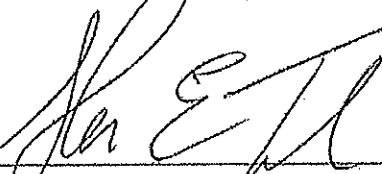
— Scott Showler, Esq.

For CITY:

Dated: Jan 10, ²⁰¹³
2012

ALESHIRE & WYNDER, LLP

By:



— Glen E. Tucker, Esq.

[END OF SIGNATURE]

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CITY COUNCIL/BANNING UTILITY AUTHORITY AGENDA

DATE: **February 12, 2013**

TO: **Banning Utility Authority**

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

SUBJECT: **Resolution No. 2013-03 UA, "Approving the amendment to the Professional Services Agreement with Stephen P. Stockton, P.E."**

RECOMMENDATION: The Utility Authority adopt Resolution No. 2013-03 UA:

- I.** Approving the Amendment to the Professional Services Agreement with Stephen P. Stockton, P.E. of Redlands, California in an amount of \$20,000.00 for consulting services related to the Whitewater Flume Restoration Project for a total contract amount of \$40,000.00.
- II.** Authorizing the Administrative Services Director to make necessary adjustments and appropriations in an amount of \$20,000.00 from the Banning Utility Authority Water Capital Facility Fund to Account No. 661-6300-471.33-11 (Professional Services).

JUSTIFICATION: It is necessary for the City to obtain Professional Services to assist the City with implementing its responsibilities under its Agreement with Southern California Edison (SCE) on the Whitewater Flume Restoration Project.

BACKGROUND: On October 26, 2010, City Council approved Resolution No. 2010-10 UA, "Awarding a Professional Services Agreement for the Whitewater Flume Restoration Project to Stephen P. Stockton, P.E." in the amount of \$20,000.00.

Southern California Edison (SCE) owns and previously operated hydroelectric facilities consisting of two small power plants. The water supply for the power plants comes from the South Fork and East Fork of the Whitewater River and is discharged into the Banning Heights Mutual Water Company's (Banning Heights) water system as well as the Banning Water Canyon. The water that is discharged into the Banning Water Canyon replenishes the underlying groundwater subbasins, which eventually are pumped into the City of Banning's Water System.

SCE operated the hydroelectric facilities under a permit from the Federal Energy Regulatory Commission (FERC) and previously notified FERC of its intention not to renew the permit after April of 2003. SCE has not operated the facilities to generate electricity since 1998 due to failure of a 900,000 gallon forbay tank and due to the failure of a portion of the canal. On October 8, 2003, FERC issued an order affirming the validity of an annual license for the water conveyance facilities and is requiring the filing of a Surrender of License.

The City has water rights to a section of the Whitewater River along with Banning Heights and it is prudent for the City to ensure continuous replenishment of the underlying groundwater

subbasins in the Banning Water Canyon. The water supply from the SCE system is very valuable to the Banning Canyon water shed area.

In June of 2010, an Agreement for Transfer of San Gorgonio Hydroelectric Project No. 344 Water Conveyance Facilities, also known as the Whitewater Flume, was fully executed between SCE, the City of Banning, Banning Heights, and San Gorgonio Pass Water Agency (Pass Water Agency). The Participating Entities are currently evaluating the purchase and repair of the water conveyance system. The City will be responsible for ten percent of the associated costs.

As part of the project, staff determined that it is necessary to obtain a consultant to assist the City in implementing its responsibilities, including but not limited to, the following: providing information and recommendations for action to be performed by the City and its partners; assisting the City by consulting on technical and processing issues with SCE; and developing a scope of work and budget for construction.

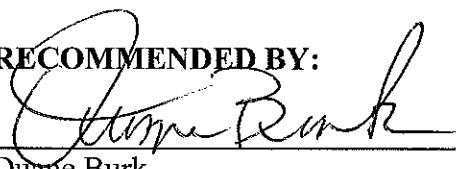
The Whitewater Flume project has been in the planning, design and environmental clearance process for several years and is entering a critical time period with the Southern California Edison Company (SCE) and the United States Forest Service. Stockton Consulting furnish design criteria, design review and interface with SCE for the Participating Entities (PE's) through the Joint Design Review Team. Continued coordination with SCE to carry out the preferred design of the project for the PE's is essential. Over the next 18 months, several meetings with the USFS and SEC will be necessary to bring the preferred design to completion and be ready for construction.

Banning Heights, the Pass Water Agency and City staff have determined and agree that continuing with this Consultant's services is necessary in order to efficiently and successfully continue with the project.

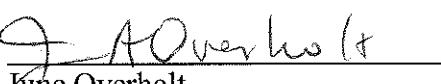
STRATEGIC PLAN INTEGRATION: Approval of this recommendation will meet the City's goal of providing a more reliable delivery of the water supply to the present and future customers of the Water Utility.

FISCAL DATA: An appropriation in the amount of \$20,000.00 from the Water Capital Facility Fund to Account No. 661-6300-471.33-11 (Professional Services) is necessary in order to fund the Amendment to the Professional Services Agreement with Stephen P. Stockton, P.E.

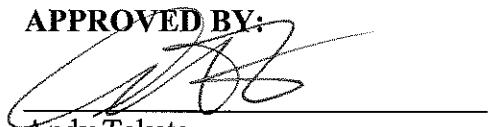
RECOMMENDED BY:


Duane Burk
Director of Public Works

REVIEWED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

RESOLUTION NO. 2013-03 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR THE WHITEWATER FLUME RESTORATION PROJECT WITH STEPHEN P. STOCKTON, P.E.

WHEREAS, Southern California Edison (SCE) owns and previously operated hydroelectrical facilities consisting of two small power plants and the water supply for the power plants comes from the Whitewater River and is discharged into the Banning Heights Mutual Water Company's (Banning Heights) water system and the Banning Water Canyon; and

WHEREAS, SCE has not operated the facilities to generate electricity since 1998 and on October 8, 2003, Federal Energy Regulatory Commission (FERC) issued an order affirming the validity of an annual license for the water conveyance facilities and is requiring the filing of a Surrender of License application; and

WHEREAS, in June of 2010 an Agreement for Transfer of San Gorgonio Hydroelectric Project No. 344 Water Conveyance Facilities, also known as the Whitewater Flume, was fully executed between SCE, City of Banning, Banning Heights, and San Gorgonio Pass Water Agency; and

WHEREAS, staff has determined that it is necessary to obtain a consultant to assist the City in implementing its responsibilities, including but not limited to, the following: providing information and recommendations for action to be performed by the City and its partners; assisting the City by consulting on technical and processing issues with the SCE; and developing a scope of work and budget for construction; and

WHEREAS, Stephen P. Stockton, P.E. previously held employment with the San Gorgonio Pass Water Agency and is well educated and knowledgeable on the Whitewater Flume facilities and water conveyance system; and

WHEREAS, staff respectfully requests an award of the Amendment to the Professional Services Agreement to Stephen P. Stockton, P.E. for Consulting Services in an amount of \$20,000.00 for a total contact amount of \$40,000.00.

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

Section 1. The Amendment to the Professional Services Agreement for the Whitewater Flume Restoration project is awarded to Stephen P. Stockton, P.E. in the amount of \$20,000.00.

Section 2. The Administrative Services Director is authorized to appropriate funds from the Water Capital Facility Fund to Account No. 661-6300-471.33-11 (Professional Services), in the amount of \$20,000.00 and is authorized to make necessary budget adjustments related to these funds.

Section 3. The City Manager is authorized to execute the Amendment to the Professional Services Agreement with Stephen P. Stockton, P.E. for the Whitewater Flume Restoration Project. This authorization will be rescinded if the parties do not execute the contract agreement within Ninety (90) days of this resolution.

PASSED, ADOPTED AND APPROVED this 12th day of February, 2013.

Deborah Franklin, 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 to the Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-03 UA was adopted by the Banning Utility Authority of the City of Banning at its Joint Meeting thereof held on the 12th day of February, 2013.

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Banning Utility Authority

CITY COUNCIL AGENDA

Date: February 12th, 2013

TO: Mayor and City Council Members

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

SUBJECT: Recommendation to Adopt a Resolution Authorizing Investment of Monies in Local Agency Investment Fund

RECOMMENDATION:

1. Adopt Resolution No. 2013-04 UA "A Resolution of the Banning Utility Authority of the City of Banning, California, Authorizing Investment of Monies in the Local Agency Investment Fund."

BACKGROUND: The Local Agency Investment Fund (LAIF) requires a specific resolution to establish a LAIF account and establish the authorized individuals to make investments in the Fund. LAIF requires that each account be established by a separate and unique entity. The City of Banning (City) has two investment accounts with LAIF. One is in the name of the City and the other is in the name of the Successor Agency. The last time a resolution pertaining to LAIF was updated for both the City and Successor Agency was in 2012. Due to the elimination of the Redevelopment Agency and because it is unclear whether the State would try to take control of the Successor Agency account, the Banning Successor Agency LAIF is not used.

The investment limit in a LAIF account is \$50 million. Interest earnings in LAIF are currently higher than most options available to the City. In order to maximize the LAIF investment option, staff is recommending establishing a new account under the Banning Utility Authority (BUA). In order to establish a LAIF account, the agency must be an established, legal agency. The BUA meets the criteria. The BUA includes the Water and Wastewater operations. Once the resolution is approved, staff will submit to LAIF the certified resolution, the Secretary of State filing for the BUA, the Joint Powers Agreement for the BUA, and the bylaws.

FISCAL DATA: Approval of this resolution will allow the City to invest more funds in LAIF to improve its earning options.

RECOMMENDED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

RESOLUTION NO. 2013-04 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND.

AGENCY ADDRESS: 99 E. RAMSEY ST., BANNING CA 92220

AGENCY PHONE: 951-922-3102

WHEREAS, Pursuant to Chapter 730 of the statutes of 1976 Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

WHEREAS, the Banning Utility Authority of the City of Banning does hereby find that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein as in the best interests of the Banning Utility Authority;

NOW, THEREFORE, BE IT RESOLVED by Banning Utility Authority of the City of Banning, California, as follows: the Banning Utility Authority does hereby authorize the deposit and withdrawal of Agency monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government code for the purpose of investment as stated therein, and verification by the State Treasurer's Office of all banking information provided in that regard;

BE IT FURTHER RESOLVED, that the following City officers or their successors in office shall be authorized to order the deposit of withdrawal of monies in the Local Agency Investment Fund:

Name	Title	Signature
June Overholt	Administrative Services Director	_____
Andy Takata	City Manager	_____

PASSED, APPROVED, AND ADOPTED this 12th day of February, 2013.

Deborah Franklin, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary

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

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

CERTIFICATION:

I, Marie Calderon, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2013-20 UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at a joint meeting thereof held on the 12th day of February, 2013 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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