AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA

April 9, 2013
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

The following information comprises the agenda for a regular meeting of the City Council and a Joint Meeting of the City Council and the Banning Utility Authority and the City Council Sitting in Its Capacity of a Successor Agency.

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 – Pastor Javier Hernandez, New Creation Church
. Roll Call - Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS/APPOINTMENTS

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.

PRESENTATIONS:

1. Proclamation – National Donate Life Month 1

APPOINTMENTS:

1. Appointments to Parks and Recreation Advisory Committee 2

IV. CONSENT ITEMS

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

Motion: That the City Council approve Consent Item 1 through 10
Items to be pulled ____, ____, ____, ____ for discussion.
(Resolutions require a recorded majority vote of the total membership of the City Council)

1. Approval of Minutes – Special Meeting (Workshop) – 03/26/13..... 10
2. Approval of Minutes – Special Meeting (Closed Session) – 03/26/13 16
3. Approval of Minutes – Regular Meeting – 03/26/13 18
4. Resolution No. 2013-41, Supporting the Governor and State Legislatures Efforts to Modernize the California Environmental Quality Act 35
5. Resolution No. 2013-42, Approving an Amendment to the Baseline Agreement with the California Transportation Commission (CTC) and the City of Banning for the Sunset Avenue Grade Separation 53

- **Open for Public Comments**
- **Make Motion**

V. REPORTS OF OFFICERS

1. Resolution No. 2013-40, Approving a Professional Services Agreement with Innovative Federal Strategies, LLC to Provide Services in Federal Legislative Advocacy and Governmental Affairs.

Staff Report 58

Recommendation: **That the City Council: 1) adopt Resolution No. 2013-40, Approving a Professional Services Agreement with Innovative Federal Strategies, LLC to provide services in Federal Legislative Advocacy and Governmental Affairs; 2) Authorizing the Administrative Services Director/ Deputy City Manager to make budget adjustments and appropriations as necessary in an amount not to exceed $42,000 based upon a monthly retainer of $3,500; and 3) Authorizing the City Manager to execute the Professional Services Agreement with Innovative Federal Strategies, LLC.**

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

VI. A. CONSENT ITEMS

1. Resolution No. 2013-08 UA, Approving an Agreement with Merlin Johnson Construction, Inc. for the Replacement of Two Pumps at the City of Banning's Wastewater Treatment Plant and Approving the Purchase of the Pumps and Materials 97
2. Resolution No. 2013-10 UA, Approving the Contract Services Agreement with Layne Christensen Company for the Repairs to Water Well No. M-3 108

- **Open for Public Comments**
- **Make Motion**

VI. B. REPORTS OF OFFICERS

1. Resolution No. 2013-09 UA, Approving Additional Funding for the Professional Services Agreement for the Whitewater Flume Restoration Project with Roy McDonald, Environmental and Regulatory Consultant.
   Staff Report 116
   Recommendation: **That the Utility Board: 1) Adopt Resolution No. 2013-09, UA, Approving additional funding for the Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant in an amount of $23,600.00 for additional professional services related to the Whitewater Flume Restoration Project for a total contract amount "not to exceed" $79,600.00; and 2) Authorizing the Administrative Services Director to make necessary adjustments and appropriations in an amount of $23,600.00 from the Water Capital Facility Fund to Account No. 661-6300-471.33-11 (Professional Services.**

2. Resolution No. 2013-03 SA, Authorizing An Increase of Additional $50,000.00 In the Budget Limit of the Professional Services Agreement with Urban Futures, Inc.
   Staff Report 131
   Recommendation: **That the Successor Agency: 1) Adopt Resolution No. 2013-03 SA, authorizing a contract amendment of $50,000 for a new total of $280,000 with Urban Futures, Inc. for expert financial management related services with respect to the ongoing wind down of the Successor Agency; and 2) Authorize the Administrative Services Director/Deputy City Manager to make necessary budget adjustments and to increase the current Purchase Order for the Professional Services Agreement with Urban Futures, Inc.**

Recess joint meeting reconvene the regular City Council Meeting.

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

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

VIII. ITEMS FOR FUTURE AGENDAS

New Items – None

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Consideration of an "in-house" attorney vs. contract
3. Policy regarding "presentation" to City Council
4. Extend the public comment period from 3 minutes to 5 minutes.

IX. ADJOURNMENT

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

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. 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 Tile II].

PROCLAMATION

WHEREAS, *organ, tissue, marrow and blood donation are life-giving acts recognized worldwide as expressions of compassion to those in need; and*

WHEREAS, *more than 116,000 individuals nationwide and almost 20,000 in California are currently on the national organ transplant waiting list, and every 90 minutes one person dies while waiting due to the shortage of donated organs; and*

WHEREAS, *the need for donated organs is especially urgent in Hispanic and African American communities; and*

WHEREAS, *more than 600,000 units of blood per year are needed to meet the need in California and at any given time, 6,000 patients are in need of volunteer marrow donors; and*

WHEREAS, *a single individual's donation of the heart, lungs, liver, kidneys, pancreas and small intestine can save up to eight lives; donation of tissue can save and heal the lives of up to 50 others; and a single blood donation can help three people in need; and*

WHERAS, *millions of lives each year are saved and healed by donors of organs, tissues, marrow and blood and the spirit of giving and decision to donate are not restricted by age or medical condition; and*

WHEREAS, *nearly ten million Californians have signed up with the state-authorized Donate Life California Registry to ensure their wishes to be organ and tissue donors are honored; and*

WHEREAS, *California residents can sign up with the Donate Life California Registry when applying for or renewing their driver's licenses or ID cards at the California Department of Motor Vehicles.*

NOW, THEREFORE, BE IT RESOLVED, *that I, Deborah Franklin, Mayor of the City of Banning along with the City Council in recognition of National Donate Life Month, hereby proclaim the month of April 2013 as "DMV/Donate Life California Month" in the city of Banning, and in doing so we encourage all Californians to check "YES!" when applying for or renewing their driver's license or I.D. card, or by signing up at www.donateLIFEcalifornia.org or www.doneVIDAcalifornia.org*

IN WITNESS WHEREOF, *I have set my hand and caused the seal of the City of Banning, California to be affixed this 9th day of April, 2013.*

ATTEST:

Marie A. Calderon, City Clerk

Deborah Franklin, Mayor

CITY COUNCIL AGENDA

DATE: **April 9, 2013**

TO: **City Council**

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

SUBJECT: **Appointment of Parks and Recreation Commissioners**

BACKGROUND: Three Parks and Recreation Commissioners, Bill Dickson, Carol Newkirk and Richard Sanchez, terms expired January 22, 2013 creating three vacancies on the Parks and Recreation Commission.

Availability of applications for residents interested in serving on the Parks and Recreation Commission was advertised in Record Gazette, on the City of Banning website, and on Channel 10. The deadline for applications to be received was on December 17, 2012. Commissioners Dickson and Sanchez submitted applications for consideration of reappointment, and one (1) additional was received by the City Clerk. The City Council interviewed the three applicants on March 5, 2013.

The Parks and Recreation Commission is made up of five members that are to be appointed by the City Council. The Commissioners serve four-year terms, which are staggered every two years concurrent with the city elections. The term of the newly appointed commissioners will expire on January 18, 2017.

Chapter 2.40 of the Banning Municipal Code governs the rules and responsibilities of the Parks and Recreation Commission. (see Attachment). The Commission serves as an advisory agency to the city council and the director of community services for the purpose of the formulation of rules, regulations and policies for all parks and recreation programs, activities, and fees. Parks and recreation commission members shall be registered voters of the City of Banning.

RECOMMENDED BY:

Andrew J. Takata
City Manager

PREPARED BY:

Heidi Meraz
Community Services Director

Attachment: Chapter 2.40 of the Banning Municipal Code

Chapter 2.40

PARKS AND RECREATION COMMISSION

Sections:

2.40.010 Established—Purpose.

There is hereby established a parks and recreation commission of the city for the purpose of facilitating the integration of the parks and recreation activities for the city.
(Code 1965, § 15-1; Ord. No. 1438, § 1.A., 6-14-11)

2.40.020 Advisory agency designated—Powers and duties.

The city parks and recreation commission shall serve as an advisory agency to the city council and the director of community services for the purpose of the formulation of rules, regulations and policies for all parks and recreation programs, activities, and fees. Parks and recreation commission members shall be registered voters of the City of Banning.
(Code 1965, § 15-2; Ord. No. 1438, § 1.A., 6-14-11)

2.40.030 Appointment of members.

A. The parks and recreation commission shall consist of five members.

B. The parks and recreation commission shall serve four-year terms, which shall be staggered every two years concurrent with the city elections. Appointments shall be made by the city council. Applications shall be made available and the closing date announced at least two months prior to the expiration of the commissioner's term to be filled.

C. Members shall serve at the pleasure of the council and may be removed at any time by a majority vote of the entire council.

D. Any member who is unexcused for two consecutive regular meetings of the commission or six meetings within a twelve-month period, whether the six meetings are excused or not, will be deemed to have resigned their office and the city council may appoint a new member to serve in the resigned commissioner's place for the remainder of the term.

E. To be excused from any such meeting, a member shall notify the community services department, at least forty-eight hours prior to any such meeting. If a member is unable to attend due to illness, injury or family matters, a statement by the member at the next regular meeting of the commission shall constitute an excused absence.
(Code 1965, § 15-3; Ord. No. 1438, § 1.A., B., 6-14-11)

2.40.040 Conduct of meetings.

A. The commission shall meet at 6:00 P.M. on the third Wednesday of the following months: January, February, March, April, May, June, September, October and November.

B. Additional meeting may occur if deemed necessary by the city council or commission chairperson.

C. A majority of the voting members of the commission shall constitute a quorum.
(Code 1965, § 15-4; Ord. No. 1438, § 1.A., 6-14-11)

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DEC 17 2012
By City Clerk's office

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COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board: PARKS AND RECREATION COMMISSION

Name: WILLIAM . DICKSON

Address: 5700 W. WILSON ST #55 BANNING CA

Telephone Numbers: Home 741-8956 Office _____ Cell 663-4170

If employed, where you work and position PARKS & REC COMM.

Length of residence in Banning 10+ YRS

Are you a registered voter in Banning? Yes ✓ No _____

Requested below is information that will be used by the City Council as a screen process to determine which applicants will be interviewed for membership on City committees, commissions and boards. Ample space is provided; please do not submit supplemental materials.

Provide a biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

PARKS & REC, PLANNING COMM. VOLY POLICE
STAGECOACH DAYS COMM. PLAY HOUSE BOWL COMM.
B-BALL. X-MAS SANTA SPORTSMAN CLAMBAKE

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What types of major issues should this committee, commission or board deal with?

MONEY TO KEEP WITH PARK UPKEEP & STAFFING

Please identify specific problems facing the committee, commission or board on which you would like to serve and explain how you feel they might be resolved:

MONEY AND STAFF ARE OUR BIGGEST PROBLEMS. WE HAVE GREAT STAFF, JUST NOT ENOUGH OF THEM

Your name will be considered by the City Council upon receipt of your application.

Please return to: City Clerk's Office/City of Banning
99 E. Ramsey Street
P. O. Box 998
Banning, CA 92220

RETURN BY: December 7, 2012 by 5:00 p.m.

Thank you for your willingness to serve your local government.

Date: 12-7-12 Signed: William DeLong

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COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board: PARKS AND RECREATION COMMISSION

Name: RICHARD SANCHEZ

Address: 942 SO. 12th ST. BANNING CA. 92220

Telephone Numbers: Home (951) 922 0786 Office (951) 849-2239 Cell (951) 218 3529

If employed, where you work and position GREAT AMERICAN REALTY

Length of residence in Banning 72 YR

Are you a registered voter in Banning? Yes ✓ No ____

Requested below is information that will be used by the City Council as a screen process to determine which applicants will be interviewed for membership on City committees, commissions and boards. Ample space is provided; please do not submit supplemental materials.

Provide a biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

I School BANNING High BEEN ON PARKS & REC 35 YR (TO Cong) AIRPORT Comm. STAGE Coach Days 35 YRS. School SARB Comm. 15 YR

What types of major issues should this committee, commission or board deal with?

Please identify specific problems facing the committee, commission or board on which you would like to serve and explain how you feel they might be resolved:

Your name will be considered by the City Council upon receipt of your application.

Please return to: City Clerk's Office/City of Banning
99 E. Ramsey Street
P. O. Box 998
Banning, CA 92220

RETURN BY: December 7, 2012 by 5:00 p.m.

Thank you for your willingness to serve your local government.

Date: 12-13-12 Signed: Rachael Sanchez

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BY:

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COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board: **PARKS AND RECREATION COMMISSION**

Name: Annell Elmore

Address: 1368 Wyte Way Banning, CA 92220

Telephone Numbers: Home (951) 849-4550 Office _____ Cell (951) 323-4416

If employed, where you work and position Self Employed

Length of residence in Banning 53 years

Are you a registered voter in Banning? Yes ✓ No _____

Requested below is information that will be used by the City Council as a screen process to determine which applicants will be interviewed for membership on City committees, commissions and boards. Ample space is provided; please do not submit supplemental materials.

Provide a biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

1977 Graduated Banning High School, 2012 - Current Student University of Phoenix

Job: Self Employed Cali Jeans.com
2007-2012 San Gorgonio Memorial Hospital
Supervisor: Ranilo Blasco (951) 769-2133
Civic: 2006-2012 Coached Youth Basketball
2011 Assistant Coach Flag Football
2009 Assistant Coach Flag Football
Granddaughters played Softball six years

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What types of major issues should this committee, commission or board deal with?

1. Cooperation between the City and School Board to allow Tennis and Walking on the school track
2. Demise of youth sports and lack of sports clinics
3. Lack of Senior Sports League

Please identify specific problems facing the committee, commission or board on which you would like to serve and explain how you feel they might be resolved:

1. I am sponsoring a softball clinic on Dec 12, 2012 with David Lindsey, Coach at Chaffey College, to improve the skills of the current High School Team
2. We are not taking advantage of the talents our senior citizens would love to share with the youth.
3. Sponsor Tennis Clinics
   A. The City has only the public courts available
   B. Cooperation between the City and School Board could make the courts at Nicolet Middle School available after school and weekends

Your name will be considered by the City Council upon receipt of your application.

Please return to: City Clerk's Office/City of Banning
99 E. Ramsey Street
P. O. Box 998
Banning, CA 92220

RETURN BY: December 17, 2012 by 5:00 p.m.

Thank you for your willingness to serve your local government.

Date: December 3, 2012 Signed: [signature]

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

03/26/13
SPECIAL MEETING

A special meeting workshop of the Banning City Council was called to order by Mayor Franklin on March 26, 2013 at 3:34 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilman Botts
Councilman Miller
Councilman Peterson
Councilman 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
Bill Manis, Economic Development Director
Zai Abu Bakar, Community Development Director
Brian Guillot, Associate Planner
Art Vela, Senior Civil Engineer
Jessica Hicks, Office Specialist
Marie A. Calderon, City Clerk

Workshop Item

1. Parking Delineation Downtown
(Staff Report – Duane Burk, Public Works Director)

Director Burk parking in the downtown has always been an interesting topic. As recent as 2010 through a SCAG (Southern California Association of Governments) Grant RBF did a study as it relates to what is available in the downtown for parking (document is available from Public Works). He said he wanted to show what some of their struggles are today and the ability or not to enforce some of these curbs that are painted and some that are not signed properly. At this time Director Burk started his power-point presentation and stated that as part of the Paseo San Gorgonio Specific Plan recommendations in July 2010 it concluded that there is adequate on-street parking supply within the downtown area to accommodate the demand. It recommended the implementation of a parking regulation plan that helps control who, when and how long vehicles may park at specific locations. He said that is kind of part of their problem as it relates to whether or not a crew is sent out to repaint these curbs and whether or not you can enforce it. He said that the delineation is from Fourth Street to Hargrave on the east and you have green, yellow and red and blue areas. In regards to some of the blue areas, going back ten years or so,

they were not available for parking. The City built some parking lots and Director Burk pointed them out. He said when you see the green curbs you will notice that the delineation of time is not there so some people may assume it is 20 minutes or an hour or let it go as unenforceable so the ability to have someone's car moved because they are there overnight or whatever is limited as it relates to it being signed properly. On Second Street some people on their own decided to paint the curb yellow and he is not saying that it should or should not have been painted yellow; he just thinks the Council should have approved that to be loading and unloading because if you don't have it signed and buses are parked on one side and vehicles on the other side, there is really no way to enforce the loading and unloading there because the yellow marking was not approved by the Council. He displayed another picture in front of the library on Nicolet Street and it is green curbed and it is not timed so if someone parks out there and the library wants people to come in and out, how do you enforce that.

Councilman Botts asked what does green mean if it doesn't have any time designation on it. Director Burk said that if it is not delineated on the curb or on the sign, people don't know what it is.

Director Burk displayed a picture showing the south side of the curb on Nicolet in front of the library that is all red by the church. He doesn't know how it got all red but it was a request so you can't park there. There is also no sign saying you can't park there but it is red and people know what red means. The next picture is looking north on San Gorgonio Ave. from about Livingston and he is not saying that these were not adopted by Council but he believes that it was so long ago that some of these greens might have turned out to be yellow at one time. The City owns the parking lot next to the mural on the Lithopass building. In the next picture the colors are red, yellow and green but again you can see on the curb there is no delineation of time and he doesn't know if this dress shop wants loading and unloading in front of their business but he doesn't know that and he would hate for his crews to go back out and paint it without getting some direction as it relates to what the Council want's staff to do. Again the same pattern is located on Ramsey by Wings Restaurant and at one time maybe this did work out but on-street parking may be something we want to see here that is delineated for an hour or maybe 20 minutes or something but that is what we have today.

Director Burk concluded his power-point presentation and stated that the intent behind this was not for the Council to give him direction today. The intent is for him to go further and review what is out there. He would say the study that they have today would tell you that you have acceptable parking within the street but delineated incorrectly, you probably don't. And you also have conditions for businesses that are coming in that would meet current standards. For example, the courthouse will come in and they will meet those standards but he believes the courthouse probably will not want on-street parking and he doesn't know that to be true or not but that would be something that is brought back to the Council at a later time. He definitely doesn't want to go out and blast all the yellow curb on Second Street and would like to bring it back to the Council if that is something you want to see. Basically we started some years ago looking for Council input and talk about it as it relates to some of the struggles as it relates to maintaining and painting these curbs.

Councilman Botts said that his history in Banning has been that the colors were dictated by the demand of the businesses or the demands of the people and that is his own personal observation. Every time an issue has come up in the eight years that he has been involved it has been a business that has demanded something and he is not sure it gets to the Council. He thinks that clearly we need a plan. He asked is there not some kind of a reasonable scientific approach to parking and are there State standards or guidelines or regulations that relate to parking.

Director Burk said that there are State guidelines and we can follow those. He said that they attempted to try to study what was the scientific side of it in the document that was prepared however, the business community weighs in a lot. You have a lot of businesses in the downtown that currently operate for example, the Fox Theater and some evenings they get really busy and so they kind of overflow in all of the parking so we would hate to have regulations that would impede the ability for the Fox Theater to accommodate the people who go watch a movie. So he thinks it is all of the above but he thinks it is kind of a blend of what the Fox Theater would want to see versus what other people want. In regards to the enforcement side of it going back to your original statement, it is exactly that and all of a sudden we get a request and you are right Council really doesn't see it and it seems to be very subjective and we are trying to move forward and get away from that.

Councilman Botts said to follow-up when he says scientific there is retail, the theater, restaurants and it is pretty standard and it seems to him that there needs to be some kind of a standard. You could apply a standard and he is very sympathetic to the businesses clearly and we need to have them sell merchandise so we can get some sales tax. That is what he meant by scientific. Also, as he recalls the police department has not enforced parking for many years and our code enforcement people when we had some were doing this and is that correct.

Director Burk said he doesn't know the answer and would say that we don't have any enforcement.

Councilman Peterson said in regards to the enforcement side if we have painted red curbs that are out there now in existence and they were not approved by the Council and not approved by ordinance but yet they are there and cars park there and they receive a citation are they legally bound to that citation.

Director Burk said the original layout of this was probably approved by Council but it was so long ago that it has changed so many different times. Red curb as it relates to the little corners and depicted in the photos that he displayed the City wanted to paint all those curbs but the parking code for Department of Motor Vehicles said you can only park within a certain amount of distance of a radius. So you really don't need to paint all of these curbs red in the area he pointed out and it becomes a maintenance problem or them. You can't park in front a fire hydrant but if you want the curb to be painted red, we can do that but technically enforcement of that is common sense when you get your driver's license. He would say that some of these areas were not approved by Council. He said the overview in the downtown originally was approved and it was to kind of accommodate the business at the time but what he is saying there has been new parking put in place and the City paid for that and maybe we could lax some of the enforcement on the street and improve the street parking is the whole intent behind this.

Councilman Welch said he has one concern and it involves the theater but he knows at some point in time we are going to have several storefronts occupied and doing business downtown. When you go to the theater you are going to spend two hours and if you are using the street parking which is being done now anyone having a retail type business is going to find it difficult to accommodate customers and he knows it is a challenge. Is there in a relatively close proximity, for example, to the theater for off street parking.

Director Burk said the parking for the off street would be First Street as it goes north and one of the considerations for First Street is that you could change that to all diagonal parking because that street is so wide and that may be something you would want us to do to accommodate parking as it goes up First Street. He did show the off street parking areas that are available. If those could be designated through signage or even work with the theater owner saying that during these times when you have heavy events we would encourage you to park here and not on the street to affect the local business person.

Councilman Miller said just looking at this there seems to be a lot of red and the way people like to shop is to just come in and park and it seems to him that through the years more and more red has appeared and in order to attract business downtown you have to have the customers. His feeling just looking at this is that he wouldn't bother going downtown because there is no place to park. His feeling is that it would be best for staff to look at this and determine whether or not we really so much red parking or any type of restriction to parking. It may very well be that the best thing to do is to have everything green and put up a sign periodically. For example, in Garden Grove there is a sign at the beginning of each block which represents the whole block and you say 30 minute parking on that block. His feeling is that it would be best if you had the time to look at this and make a plan for it and eliminate some of this red.

Mayor Franklin asked if there was a recommendation in that report as to what they think we ought to be able to do.

Director Burk said Section 4.0 of this document is all recommendations and it has a lot to do with how the city may develop with these businesses. It has a lot to do with land use, development standards and parking requirements as it moves forward. It talks about a percentage of the build-out and how you may want to accommodate that and talks about signage. It has some really good ideas as it relates to diagonal parking and flow. The idea behind having that study done and bringing this forward to the Council is as to how we are going to implement these strategies without really being a negative impact.

Mayor Franklin asked if there was a specific amount of time for green. Director Burk said that he didn't know the answer to that question and would say the answer is no. She also asked are we sending mixed messages if we have some places where a fire hydrant is painted red and others we don't and some places we do certain colors.

Director Burk said that the Department of Motor Vehicles Code dictates a lot of this painting. He doesn't think that it sends mixed messages.

Councilman Botts said some would argue that if you come down here on a Wednesday, Friday, or a Saturday night we don't have a parking problem. You can always find a place to park but how far are people going to walk to the theater and to retail and like Councilman Miller said people are only going to walk so far. He hopes that as we think about this and move forward we have talked about a parking structure in the past and he knows that it is not part of the discussion here but we need to keep it in context that at some point he does believe that every one of those buildings will be full out there of retail and restaurants and we will have a parking problem and he hopes it is not too many years away. His other thought is while we are talking about parking for a long time we said the courthouse is wonderful and a little added benefit is that we are going to be able to use their parking lot at night and on weekends as we hopefully begin to have more events downtown. We haven't talked about that for a long time and he would hope that either that is true or we can make it true.

Director Burk said he believes that is part of the dialogue with the court and it is similar to the parking lot that they have now but there will be restricted hours when you can and cannot do it.

Mayor Franklin opened the item for public comment.

Ed Ball, 4678 W. Hoffer addressed the Council stating that he has about 27 years in the access parking and transportation system industry and he would like the Council do two things: 1) ask the City Manager to bring into conformance with your existing ordinance the parking on the street. The ordinance itself calls for the City Traffic Engineer to make decisions and not the Council. It may be that the Council wants to do it but it seems to him that if you are paying for someone to be your expert, you might want to use them. 2) The issue in the long run is going to be turnover on parking and that is something you need to keep adjusting so it is his suggestion that the Council direct the City Manager that when curbs are painted and not by us that somebody goes out there and charges the person when you take the paint off the curb and when you are going to put in a new curb have a reason for it endorsed by the City Traffic Engineer. So in the short run ask the City Manager to bring things in conformance with your existing ordinance and in the future use your City Traffic Engineer that is mentioned in the ordinance as being your expert.

Mayor Franklin asked Director Burk what are the next steps for this item.

Director Burk said the next steps are to consult with our traffic engineer and have a little bit better layout for the Council. He would disagree a little bit as it relates to the City Traffic Engineer and he thinks the Council should also know what is going to be accommodating to the downtown businesses only because you get the phone calls along with the City Manager. The whole idea behind this was to make it a public document and a public record as to what we are currently looking at. The next step for him would be to get a traffic engineer to take a look at the downtown parking as it relates to our ordinance and move forward with the City Manager and as we go into the budget cycle it would be something we want to budget and move forward with.

Councilman Botts said his personal opinion is that he would not want to sit up here and make decisions on what color the curbs are. We ought to know and there ought to be a policy that we

are comfortable with and we know businesses are going to be happy and others. But you might disagree with that but he doesn't want this Council to make decisions on the color or curbs.

Mayor Franklin said he is talking about bringing it back after they get information and giving us a recommendation.

Director Burk said that would be correct. We would give Council the recommendation as it relates to funding it and also who makes the decisions.

Councilman Miller said that he wanted to say that a painted curb that has been neglected, as they usually are, is kind of unsightly and does not make the city attractive. In his opinion, signs are more effective and more easily seen and more attractive and if you would consider that in your recommendations.

ADJOURNMENT

By common consent the meeting adjourned at 4:00 p.m.

_____

Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

03/26/13
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on March 26, 2013 at 4:01 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
Wes Miliband, Attorney
Duane Burk, Public Works Director
Bill Manis, Economic Development Director
Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney said we have labor negotiations for discussion pursuant to Government Code Section 54957.6; a matter of potential initiation of litigation under paragraph (d) (4) of Government Code Section 54956.9; existing litigation pursuant to the provisions of paragraph (d) (1) of Government Code Section 54956.9 – Stephen J. Mascaro, et al. v. City of Banning, et al; real property negotiations regarding 2301 W. Ramsey Street pursuant to the provisions of Government Code Section 54956.8.

City Attorney said that he has been informed that there are two items that need to be added to the closed session: 1) real property negotiations concerning the Airport Property; and 2) initiation of litigation. The need to take action on those matters arose subsequent to the posting of the agenda.

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

Mayor Franklin opened the item for public comments. There were none. Meeting went into closed session at 4:03 p.m. and reconvened at 5:06 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:07 p.m.

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Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

03/26/2013
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Franklin on March 26, 2013 at 5:14 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: Andy Takata, City Manager
David J. Aleshire, City Attorney
June Overholt, Administrative Services Dir./Deputy City Manager
Duane Burk, Public Works Director
Bill Manis, Economic Development Director
Fred Mason, Public Utility Director
Zai Abu Bakar, Community Development Director
Heidi Meraz, Community Services Director
John McQuown, City Treasurer
Jessica Hicks, Office Specialist
Marie A. Calderon, City Clerk

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

REPORT ON CLOSED SESSION

City Attorney said the Council met in closed session concerning labor negotiations and a status report was given and no reportable action taken. Concerning initiation of litigation a status report was given and there was also a second initiation of litigation matter that had been added to the agenda and a status report was given and no reportable action was taken. In regards to existing litigation Mascaro vs. City of Banning a report was given on the status of that matter and no reportable action was taken. In regards to property negotiations concern property at 2301 W. Ramsey a status report was given and no action was taken. A second real property item was added concerning the airport property and a status report was given and no reportable action was taken.

PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Inge Schular resident of Banning thanked staff for putting in very informative notices into the Record Gazette. At the beginning of all the public notices with bold type on the title is very well done and is appreciated. Now we can ask for maybe a little bit more detail in the notice itself so that we know what these numbers actually stand for.

Rosa Gascoigne, volunteer member of the Banning Centennial Celebration Committee, extended an invitation to everyone in Banning to the many events planned in commemoration of the Banning Centennial. In April, Wyatt Earp and original musical will be presented on April 3 at the Grand Oaks Steakhouse followed by performances at the Cultural Alliance on Friday and Saturday evenings and a matinee on Sunday. Banning's First Earth Day will be held on April 13th at Gilman Ranch with lectures on the hour about sustainability. The lecture in April will be presented by retired Banning Unified teacher and librarian Betty Meltzer and will take place on April 13th. The next big event will be an amazing show of Mexican folkorico ballet by The Layenda Dance Company on March 30th at the Nicolet Middle School Auditorium at 7 p.m. and admission is $10.00 and this will benefit Carol's Kitchen. Tickets are available at the Banning Community Center. For more information on the different activities you can visit www.banning100birthday.com. Very soon there will be two billboards on the I-10 freeway promoting the Centennial Celebration.

Marion Johnson announced that the San Gorgonio Child Care Consortium will have their annual fundraiser called "An Evening in Italy" at the Banning Community Center on April 6th and dinner will be served and reservations are required. She said that the San Gorgonio Child Care Center has been in Banning for more than thirty years providing child care and development. It has been successful but they need funds to continue the work that they are doing.

Fred Sakurai said continuing on the theme of the last City Council meeting he doesn't know who determines what topic goes in closed/secret session or not or if there is a criteria or if there is anything of controversy it goes into closed session/secret session he doesn't know. He said that Mr. Fields bought the last election last year and put Mr. Miller and Mr. Peterson on the City Council. He had a lawsuit against the City and because this entire lawsuit discussion was in secret session we don't know if he also bought the City Council. He bought the election and did he buy the City Council, we don't know. When will we ever learn; he doesn't know. He said anything that is controversial where we can get an idea of what the City Council Members think or what their reactions are to anything that would affect the City whether they are for or against the City we don't know but they are out there and it goes into closed session. When you get into labor negotiations you are taking about spending our tax dollars and we don't know where our tax dollars go. Somewhere along the line he wishes that someone would come out and say these are the criteria for topics that go into closed session and anything else that is non-controversial, that is boring, that is mundane it will come out into the general session and try to keep the people that do attend the Council meetings awake. He hopes that the Council will come out and let them know what is going on in the City.

City Attorney said that there are legal criteria under the Brown Act as to what can be discussed in closed session. Controversial is not one of the criteria. The criteria are that if it pertains to real property negotiations, personnel matters or if we are buying property he thinks a way to get a handle on that is that if it is something that is going to be back and forth on negotiation that negotiation process the negotiators have to get direction from the Council on terms of the negotiation. The ultimate result of the negotiation is a contract or litigation actually gets filed then that is in the public. The actual personnel contract can be negotiated in closed session and the labor agreements, memorandums of understanding all end up on public agendas and are acted upon publically and are put on an agenda and the public is able to see the contracts.

Don Smith addressed the Council stating that the Council already heard about the lecture to be held on April 13th at the Dorothy Ramon Learning Center and the speaker Betty Meltzer was a long time English teacher and librarian and she always liked to try to bring in interesting local facts as part of the learning experience and she always found it difficult that there were not many facts about the local Indians so on her own dime she really researched the history of the local Indians and how and when the white settlers came in and what happened. She really researched what happened here locally regarding how the tribal lands got smaller and smaller and smaller. It is a fascinating real story and she will tell about the actual facts that happened here. He also announced that the bust of Phineas Banning has been poured and it will be in Banning on April 19th where they will have the unveiling at the new art gallery at the Haven from 4 to 6 p.m. and the sculptor will be here to present the bronze bust. On May 1st the Art Hop (Spring Festival and Art Show) will be held.

Diego Rose resident of Banning and business owner addressed the Council stating that he has approached this Council once before in the past about bringing forth information about the hospital in regards to a rebuttal from information that was presented to this Council already by the hospital CEO Mark Turner several months now. The information that he would like to present is both public information and information that was already presented to the Grand Jury. He is asking this Council to allow him time to speak and give not just a five-minute or a three minute presentation but give him the same respect that was given to March Turner the CEO of the hospital. He said he needs more than five minutes and he thinks it is more than necessary that the public be given the same opportunity that are being given to corporations or individuals within the city to give to this Council. The hospital as it stands right now is publically-owned, it is a district hospital and there are elected officials on that board and because of that this City Council does have a vested interest in what goes on in that hospital and the public here has more than a vested right to hear some of this information and if it is not brought forward by somebody, then it is swept under the rug. Just like several people within the audience today are concerned about the transparency of the information that we are given as members of the city (taxpayers). He has not heard anything and he doesn't see it on the agenda and has asked to be on the agenda and he has not heard from anyone and he is a bit concerned, again, this gets swept under the rug. He is curious according to the Brown Act why he can't present this information or why this information is not in a public forum. If somebody can give him some information or some kind of an idea why it hasn't been, why it has not, he is all ears. He thinks that everybody that is paying taxes for this hospital, the expansion and who is going to be lobbied for another $184 million dollars has some right to know an opposite side of the information that was given. He said that he has the same information that was given to the

Grand Jury that they were more than apt to take and investigate and this is the same thing that he would like to present to the Council but just in a different manner.

City Manager said that he did talk to Diego Rose about the policy that needed to be created regarding presentations and at the last City Council meeting the Council approved staff to work on a policy regarding presentations. So staff is in the process of doing that right now and hopes to get it back to the Council within a month and whether it meets Diego's needs or not is going to be totally different and the Council has to decide that so we are working on a policy.

Gene Walker, Chair of the Community Action Commission for the Community Action Partnership of Riverside County addressed the Council and said that the CAP Agency for Riverside County is the anti-poverty agency for the county. He said that they are here this evening to pay tribute to one of their former commissioners and they are looking forward to meeting Councilman Peterson and Councilman Welch at their commission meetings as they have been named by the Mayor as her replacement. At this time Mr. Walker and members of the Committee made the presentation to the Deborah Frank with a deep appreciation for her service to the Riverside County Community Action Commission 1996 to 2012.

CORRESPONDENCE – There was none.

PRESENTATIONS

1. Proclamation – Child Abuse Awareness Month

Mayor Franklin asked if anyone was presented to receive the proclamation. Seeing no one come forward she said that it will be mailed to them.

CONSENT ITEMS

Councilman Botts pulled Consent Item No. 11 and Councilman Miller pulled Consent Items 6 through 10 for discussion.

1. Approval of Minutes – Special Meeting – 03/05/13

Recommendation: That the minutes of the special meeting of March 5, 2013 be approved.

2. Approval of Minutes – Special Meeting – 03/12/13 (Closed Session)

Recommendation: That the minutes of special meeting of March 12, 2013 be approved.

3. Approval of Minutes – Regular Meeting – 03/12/13

Recommendation: That the minutes of the regular meeting of March 12, 2013 be approved.

4. Approval of Proposed Amendments to League Bylaws

Recommendation: That the City Council approve the Amendments to the League Bylaws.

5. Report of Investments for February 2013

Recommendation: The City Council receive and file the monthly Report of Investments.

Motion Botts/Welch to approve Consent Items 1 through 5. Mayor Franklin opened the item for public comments. There were none. **Motion carried, all in favor.**

6. Resolution No. 2013-30, Awarding the Bid for the Downtown Underground Project – Phase 1 Contract to Southern California West Coast Electric, Inc. of Beaumont, CA in the Amount Not to Exceed $179,069.50 including taxes

Recommendation: That the City Council adopt Resolution No. 2013-30.

Director Mason gave a staff report on this item. Councilman Miller asked a few questions in regards to the decorative lights. Mayor Franklin asked some questions in regards to the time frame when this will be done and noticing to the various businesses that may be impacted.

Mayor Franklin opened the item for public comments.

Don Smith commented on both Consent Items 6 and 9 in regards to getting local businesses to bid on these projects.

7. Resolution No. 2013-32, Approving the General Plan Annual Report for Calendar Year 2012 and Directing Staff to File the Report with the State Office of Planning and Research and the State of Department of Housing and Community Development

Recommendation: That the City Council adopt Resolution No. 2013-32.

Director Zai gave the staff report on this item. Councilman Miller had several questions in regards to programs contained in the various areas of air quality, biological resources, circulation element and public art program. There was further staff and Council discussion in regards to golf cart paths and metrolink service.

8. Resolution No. 2013-35, Approving a Professional Service Agreement with HCA, Inc. for Architectural Design Services for the New Corporate Yard Warehouse and Maintenance Building

Recommendation: That the City Council adopt Resolution No. 2013-35, Approving a Professional Services Agreement with HCA, Inc. for Architectural Design Services for the new Corporate Yard Warehouse and Maintenance Building for an amount "Not to Exceed" $84,520.00; and authorizing the City Manager to execute the Professional Services Agreement with HCA, Inc. of Redlands, California.

Director Burk gave the staff report on this item. Councilman Miller asked about competitive bidding on this project.

9. Resolution No. 2013-36, Approving the Mold Remediation Repairs at City Hall and All Related Expenditures

Recommendation: That the City Council adopt Resolution No. 2013-36, Approving the mold remediation repairs at City hall and all related expenditures; Authorizing the Administrative Service Director to appropriate $18,756.48 to Account No. 470-3200-412.90-15 (Capital Expenditures/Building Improvements) and to make all necessary budget adjustments, appropriations and transfers related to the approval of the Mold Remediation Repairs at City Hall; Authorizing the City Manager to execute all contract agreements related to mold remediation repairs at City Hall.

Director Burk gave the staff report on this item. Councilman Miller had some questions in regards to how the payment was done.

10. Resolution No. 2013-37, Approving the Construction, Maintenance and Use Agreement with Union Pacific Railroad Company for the Grade Separation at Sunset Avenue

Recommendation: That the City Council adopt Resolution No. 2013-37, Approving the Construction, Maintenance and Use Agreement with Union Pacific Railroad Company, for the Grade Separation at Sunset Avenue; and Authorize the Mayor to execute the Construction, Maintenance and Use Agreement with the Union Pacific Railroad Company.

Director Burk gave the staff report on this item. Councilman Miller asked about where the new "shoofly" was going to be located and how long it will be in place and the costs involved.

11. Approval of Exclusive Negotiation Agreement by and between the City of Banning and the Fairview Holdings, S.A., LLC

Recommendation: That the City Council Approve the Exclusive Negotiation Agreement with Fairview Holdings, S.A., LLC and authorize the Mayor, City Attorney & the City Clerk to execute the final documents; and Direct staff to continue discussion with the representatives of Fairview Holdings, S.A., LLC and work towards, in good faith, the culmination of a development agreement or equivalent agreement(s), that may provide for future development of the area in and around the Banning Municipal Airport only after said agreements have been considered and approved by the City Council after a public hearing in accordance with the law.

Councilman Botts said he pulled this item because he wanted to make some comments.

Director Manis gave the staff report on this item. City Attorney said that a number of the changes benefited the developer but some of the things were actually refinements that the City got into the deal and he went over the changes to the document and these changes are also reflected in the staff report.

City Manager wanted to stress that this is basically a contract that allows you to negotiate with the company. It is not the final product because you don't know what the final product is and they still have to go through CEQA (California Environmental Quality Act), NEPA (National Environmental Protection Act) and other processes. You could go through that whole process and you may turn down the project after you review. There are still a lot of steps to go forth. City Attorney said that this is an agreement to negotiate and not a final contract.

The Council had various questions and comments about the project and wanted staff to investigate and verify the prospectus, due diligence with this developer, decisions on what goes on consent calendar, transparency, the Brown Act, Council voting to bring this item forth to the public, and Council's dedication to job creation.

Councilman Botts said that he would like to make a change to the ENA (Exclusive Negotiation Agreement) and that would be Section 1, item F.2 located on page 246 of the agenda packet or page 7 of the agreement. It says "City and Developer may also negotiate for City participation in the Project through receipt of a negotiated financial return" and he would like to change "may" to **"shall"**.

Mayor Franklin said that there is an oral agreement to this change from a representative of the company, John Ohanian who is in the audience.

There was some further Council comments in regards to this project that it could be a major development in the economic being for the city of Banning and we are not investing a lot of money on this that could go sideways but we are investing time, talent and energy and this area being perfect for logistics and warehousing and the advantage is that it is no cost to the City. Also the City has the absolute right to say no if the agreement does not satisfy the Council.

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

Motion Welch/Botts to approve Consent Items 6 through 10. Motion carried, all in favor.

Motion Botts to approve Consent Item No. 11, approving the Exclusive Negotiation Agreement by and between the City of Banning and Fairview Holdings with modification to the proposed agreement changing "may" to "shall" in Section 1.F 2. Motion seconded by Councilman Miller. Motion carried, all in favor.

PRESENTATIONS (cont.)

Mayor Franklin invited the Council to the podium to present the proclamation for Child Abuse Awareness Month to the representative.

Dan Rodriguez, Treasurer for Prevent Child Abuse in Riverside County apologized for his tardiness and stated that they are a 501 (3) (c) organization and also part of a contract with Riverside County Department of Social Services. He is glad that the Council is a great supporter of Prevent Child Abuse Month coming up in April. He gave background information about their organization. He thanked the Council for the proclamation and their support.

JOINT MEETING

Mayor Franklin recessed the regular City Council meeting and called to order a joint meeting of the Banning City Council and the Banning Utility Authority and the City Council Sitting in its Capacity of a Successor Agency.

CONSENT ITEMS

1. Resolution No. 2013-05 UA, Approving the Payment of "Not to Exceed" $50,000.00 to the Beaumont Basin Watermaster for the Redetermination of the Beaumont Basin Safe Yield.

Recommendation: That the Banning Utility Authority adopt Resolution No. 2013-05 UA.

2. Resolution No. 2013-07 UA, Approving an Agreement with the Banning Heights Mutual Water Company for the Rehabilitation and Maintenance Allocation of Responsibilities and Rights for San Gorgonio Hydroelectric Project No. 344 Water Conveyance Facilities.

Recommendation: Adopt Resolution No. 2013-07 UA: Approving an Agreement for the Rehabilitation and Maintenance Allocation of Responsibilities and Rights for San Gorgonio Hydroelectric Project No. 344 Water Conveyance Facilities; and Authorizing the City Manager to execute the Agreement for the Rehabilitation and Maintenance Allocation of Responsibilities and Rights for San Gorgonio Hydroelectric Project No. 344 Water Conveyance Facilities.

Mayor Franklin opened the item for public comments.

Dan Farris, 9235 Bluff Street addressed the Council stating that he is a civil engineer and worked with the City on the agreement in regards to Consent Item No. 2. He said that three Board Members of the Banning Heights Mutual Water Company are also in attendance this evening and wanted to thank the Council for considering this item and City Manager, City Attorney, Director of Public Works and former Council Members who worked with them. He thinks that they worked their way to a really good agreement.

Motion Botts/Welch to approved Consent Items 1 and 2. Motion carried, all in favor.

REPORTS OF OFFICERS

1. FY 2012-13 Mid-Year Budget Review
(Staff Report – June Overholt, Administrative Services Director/Deputy City Manager)

Director Overholt addressed the Council on this item and started her power-point presentation (Exhibit "A") and stated that the same information is contained in the staff report.

Council thanked Director Overholt and her staff for all their hard work and all the departments who work so hard on maintaining our budget this past year.

Councilman Botts said the $1.8 million dollars that was City money (tax increment or property tax money belonging to the City) went to the Banning Unified School District, Mt. San Jacinto College and San Gorgonio Pass Water Agency and the City received a little piece of that.

Director Overholt thanked Councilman Botts for mentioning that and she said that this was money that had previously been available to the City to do good things helping the low and moderate income community and now that program is completely eliminated due to the governor and the legislator's actions.

Councilman Miller said that as a result of these numbers it indicates that there is going to be necessarily an increase in our wastewater rates and our electric utility rates.

Mayor Franklin opened the item for public comments.

Motion Botts/Miller that the City Council adopt Resolution No. 2013-38, the Banning Utility Authority Resolution No. 2013-06 UA and the Successor Agency Resolution No. 2013-06 SA, Authorizing the Administrative Services Director to make necessary budget adjustments to implement the mid-year analysis. Motion carried, all in favor.

Mayor Franklin recessed the joint meetings and reconvened the regular City Council Meeting

PUBLIC HEARING/REPORT OF OFFICERS

1. General Plan Amendment (GPA 13-2502) – Amendment to the Land Use and Economic Development Policies to Provide for the Attraction and Retention of Commercial and Business Development.
   (Staff Report – Zai Abu Bakar, Community Development Director)

Director Zai gave the staff report on this item as contained in the agenda packed. Staff is asking the Council to amend the current General Plan for land use and economic development to provide a strong policy direction to help generate revenues and providing jobs to the residents. She said that in terms of the economic development element itself it was a tag-team approach between Economic Development and Community Development. She said that Bill Manis made the changes to the Economic Development portion in such a way that all the data and information that was completely outdated he has removed. She said that there was a typo on page 364, Program 4.C in regards to Responsible Agency and that "Redevelopment Agency and CABAM (Core Area Businesses and Merchants) are not active anymore and both of those should be removed and replaced with City.

Councilman Miller had a question in regards to the Charette and asked if consideration of that in this plan and in regards to the airport and the new plan for development of the logistics center, and on page 412 it mentions Mopar Drag City and is that still in the plan. Director Zai said that Drag City is no longer alive.

Mayor Franklin said the changes are so we have more flexibility in what we are able to do in the future but looking at a higher quality of product that comes into the City. Director Zai said that was correct.

Mayor Franklin opened the public hearing for comments from the public. Seeing no one come forward, Mayor Franklin closed the public hearing.

Motion Welch/Peterson that the City Council adopt Resolution No. 2013-33, Approving General Plan No. 13-2502, Amending the Land Use and Economic Development Element Policies to Provide for the Attraction and Retention of Commercial and Industrial Development that generate and increase revenues from sales tax, property tax and provide jobs for the residents of Banning. Motion carried, all in favor.

2. General Plan Amendment (GPA 13-2501) – Amendments to the General Plan Circulation Element.
(Staff Report – Zai Abu Bakar, Community Development Director)

Director Zai gave the staff report as contained in the agenda packet. She said that this is a project between Public Works and Community Development and this item is included in the Council's Strategic Plan for 2011-2016, Goal #3, Item A-3 and if approved, this will be checked off the list. She mentioned that in terms of the environmental they went through the whole process and followed State law. She said that in terms of the actual changes to the General Plan itself Les Card with LSA Associates will touch on the important points.

Less Card, LSA Associates addressed the Council stating that they were retained by the City to prepare the General Plan Amendment document, the technical studies and the environmental impact report. He said the presentation is very similar to what was presented to the Council at the joint meeting study session with the Planning Commission and he briefly went over the various changes and the amendment has two components to it to amend the circulation element to change the acceptable level of Level-of-Service (LOS) from the current LOS C to LOS D and to remove the Interstate 10 Highland Home interchange.

There were some Council questions in regards Highland Home Road and where it will end, when will these changes be implemented and can this be revisited in the future if circumstances substantially change.

Director Burk said implementation will start immediately and yes it can be revisited.
Mayor Franklin opened the public hearing for comments from the public. Seeing no one come forward, Mayor Franklin closed the public hearing.

Motion Welch/Miller that the City Council adopt Resolution No. 2013-34, Certifying the Final Environmental Impact Report (FEIR) (State Clearing House No. 2012011008) and General Amendment (GPA 13-2501) Amending the Circulation Element. Motion carried, all in favor.

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

City Council

Councilman Welch –

- He stated that State Senator, Bill Emmerson opened a new office in Redlands and they are having an open house at the new location on Thursday, March 28th from 5:00-7:00PM. The address is 1801 Orange Tree Lane, Ste. 240. The public is cordially invited to the open house.

Councilman Miller –

- Thanked staff for all the work that they had done and he doesn't think that people really recognize how much they put in to making this City run.

Councilman Peterson –

- Thanked staff for their hard work and keeping the City moving.

Mayor Franklin –

- Thanked everyone who worked on the softball grand opening that was held last Saturday. There were over 560 children that participated. Her thanks are not only to the parents who brought the children out but to all the staff and all the volunteers that participated especially our own Parks and Recreation staff and the Commission. They made this a really nice event for the city.
- Tomorrow there is a Pass Area Summit that is being hosted by Supervisor Ashley starting at 9 a.m. with the program starting at 10 a.m. at Casino Morongo and the three topics are: Economic Development, Water and Transportation.
- Please mark your calendars for April 20th for the 8th Annual Disaster Preparedness Expo from 10 a.m. to 2 p.m. at the Banning Community Center and this year they are adding something new and that will be how to prepare yourself against Cyber Crime. Cyber Crime includes identity theft and how people are able to get into your computer and also it is recommended not to use your laptop or your IPad at a Starbucks or at the airport to check your email if you are using a free Wi-Fi connection because that is one way people are able to get into your programs and accounts and there are ways that they can do it so you have no recourse against the bank.

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

Report by City Manager

City Manager Takata reported -

- That Paul Cook called today, our former Assemblyman for the area, and said even though we are not in his district he still represents us.

ITEMS FOR FUTURE AGENDAS

New Items –

- Extend the public comment period from 3 minutes to 5 minutes.

There was a consensus from the council members for this item to be placed on a future agenda.

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Consideration of an "in-house" attorney vs. contract
3. Policy regarding "Presentations" to City Council

Mayor Franklin extended her thanks to the staff that they do on an on-going basis and she knows that it is not just when they do the special reports for the Council but on-going all staff does a really good job in making sure our City runs well.

ADJOURNMENT

By common consent the meeting adjourned at 7:19 p.m.

Prepared By:

_____
Jessica Hicks, Deputy City Clerk

and: _____
Marie A. Calderon, City Clerk

Approved By:

_____
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.

MIDYEAR PRESENTATION FISCAL YEAR 2012-13

March 26, 2013

Proud History
Prosperous Tomorrow

Agenda

- General Fund
- Other funds
- Utilities
- Successor Agency
- Future challenges

Process

- Department review
- Finance review
- Update Fund Summary Status and available resources based on June 30, 2012 year end actual balances
  - General Fund beginning balances includes emergency contingency
- Prepare budget adjustments for Council approval

General Fund – Revenues

Midyear Adjustments:	
Sales Tax	169,000
RDA asset distribution	291,541
Transfer from Water & Refuse	73,000
Electric Administration Fee	91,000
Miscellaneous reductions	(166,138)
Net increase in Revenues	$458,403

General Fund – Expenditures

Midyear Adjustments:	
Personnel savings - net	(225, 766)
Recreation & Aquatics	34,666
Police overtime	120,109
Transfer to Gas Tax Fund	73,000
Animal Control	(25,650)
Misc. reductions – net	(21,459)
Net reduction in Expenditures	$ (45,100)

5

General Fund Status

FY13 Adopted Budget Surplus/(Deficit)	0
Adjustments during first 6 months:	
Encumbrances	(199,750)
Net continuing appropriations - grants	655,661
Net continuing appropriations - other	(61,615)
Adjusted Budget (before midyear)	394,296
Midyear adjustments:	
ADD: Increase in Revenues - net	458,403
ADD: Reduction in Expenditures - net	45,100
Revised Budget surplus w/ midyear adjustments	$ 897,799

6

Special Revenue Funds

- Includes funds that are restricted in use. Examples include:
  - Gas Tax
  - Measure A
  - Grants

- Total Adjusted Revenues $ 3,982,448
- Total Adjusted Expenditures $ 5,215,482

7

Capital Improvement Funds

- Includes funds that are restricted in use.
  - i.e. Development impact funds, major capital projects
- Sunset Grade Separation project represents the majority
  - Revenue $2,858,728 M
  - Expenditures $ 2,085,866 M

- Total Adjusted Revenues $ 2,868,328
- Total Adjusted Expenditures $ 2,317,432

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Enterprise Funds

- Includes funds that are considered to be like a business:
  - Airport
  - Transit
  - Refuse

- Total Adjusted Revenues $ 5,514,344
- Total Adjusted Expenditures $ 5,463,483

9

Water Funds

Water Funds	Available resources @ 6/30/2012	Projected YTD Gain(loss)	Projected balance @ 6/30/2013
660 – Water Operations	4,096,397	920,916	5,017,313
661 – Water Capital Facilities	4,756,585	(564,682)	4,191,903
663 – BUA Water Capital Project	2,474,553	(767,250)	1,707,303
669 – BUA - Water Debt Service	86,391	500	86,891
Combined Fund Balance >>>	11,413,926	(410,516)	11,003,410

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Exhibit "A"
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Electric Funds

Electric Funds	Available resources @ 6/30/2012	Projected YTD Gain(loss)	Projected balance @ 6/30/2013
670 - Operations	7,751,932	(1,258,463)	6,493,469
672 - Rate Stability	5,935,907	60,000	5,995,907
673 - Electric Improvement	8,643,598	(1,734,017)	6,909,581
674 - Electric Bond Project Fund	15,116,679	(6,968,384)	8,148,295
675 - Public Benefit Fund	200,817	(21,595)	179,222
678 - Electric Debt Service Fund	389,611	(2,000)	387,611
Combined Fund Balance >>>	38,038,544	(9,924,459)	28,114,085

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Wastewater Funds

Wastewater Funds	Available resources @ 6/30/2012	Projected YTD Gain(loss)	Projected balance @ 6/30/2013
680 – Wastewater	1,206,444	(130,456)	1,075,988
681 – Wastewater Capital Facility	10,597,313	20,000	10,617,313
683 – BUA Wastewater Capital Project	3,302,311	(574,666)	2,727,645
685 – State Revolving Loan	768,565	1,897	770,462
689 – BUA Wastewater Debt Service	88,993	280	89,273
Combined Fund Balance >>>	15,963,626	(682,945)	15,280,681

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Reclaimed Water Funds

Reclaimed Water Funds	Available resources @ 6/30/2012	Projected YTD Gain(loss)	Projected balance @ 6/30/2013
662 - Irrigation Water	3,011,000	(1,844,459)	1,166,541
682 - Wastewater Tertiary	3,398,365	344,000	3,742,365
Combined Fund Balance >>>	6,409,365	(1,500,459)	4,908,906

Internal Service Funds

- Include funds that provide services to other City operations. These include:
  - Insurance (worker's compensation & general liability)
  - Fleet
  - Information services
  - Utility billing services

- Total Adjusted Revenues $ 5,400,860
- Total Adjusted Expenditures $ 5,497,369

Successor Agency

Overview

- Oversight Board established and meeting
- Due Diligence Review completed with DOF
- ROPS (4) for July to December 2013 with DOF
- Additional analysis in process

Successor Agency Fund	Available resources @ 6/30/2012	Projected YTD Gain(loss)	Projected balance @ 6/30/2013
805 - Redevelopment Obligation Retirement Fund	1,452,044	256,268	1,708,312
810 - Successor housing Agency	1,860,298	(1,821,144)	39,154
830 - Debt Service Fund	40,804	581,124	621,928
850 - Successor Agency	3,079,841	(1,183,706)	1,896,135
855 - Tax Alloc Bonds - 2007	9,163,090	(598,395)	8,564,695
856 - Tax Alloc Bonds - 2003	126,694	(42,886)	83,808
857 - Low/Mod Tax Alloc Bonds - 2003	586,254	(148,800)	437,454
Combined Fund Balance >>>	16,309,025	(2,957,539)	13,351,486

Future Challenges

General Fund

- Increasing costs with PERS
  - They have changed the actuarial assumptions which will begin in FY14 = 2% to 3% increases
- Grants with end dates or matching requirements

Recommendation

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

CITY COUNCIL
CONSENT ITEM

DATE: **April 9, 2013**

TO: **City Council**

FROM: **Zai Abu Bakar, Community Development Director**

SUBJECT: **California Environmental Quality Act (CEQA) Modernization**

RECOMMENDATIONS: City Council adopt Resolution No. 2013-41:

I. Receive and file information on CEQA modernization efforts in Sacramento.

II. Ratify membership in the CEQA Working Group and endorse the policy principles for CEQA modernization.

III. Direct staff to send the adopted resolution and attached Local Government Officials in Support of CEQA Modernization letter to the Governor, Members of the State Senate and Assembly, Riverside County Transportation Commission, and CEQA Working Group.

BACKGROUND AND ANALYSIS: CEQA was adopted by the State in 1970. The purpose of CEQA is to protect the environment and to give the public the opportunity to participate in the decision making process. Over the years CEQA was amended numerous times by State legislatures to address the various environmental areas of concern.

CEQA requires that lead agencies, such as the the City of Banning which approves development projects, to perform an environmental analysis of individual projects through a document titled "Initial Study" (IS). The IS analyzes eighteen (18) categorical areas of concern and covers eighty-nine (89) environmental related questions. Depending upon the result of the IS, the lead agency must prepare a Negative Declaration (ND), Mitigated Negative Declaration (MND), or Environmental Impact Report (EIR). There are various technical documents that are required for the ND, MND, and EIR. Depending upon the types and locations of the projects, traffic, air quality, greenhouse gas, and biological studies are required. The documents and the technical studies are very costly and time consuming. These documents must be prepared by an expert in the field and in general, the EIR could cost a developer a minimum of $100,000. It takes approximately one year for the EIR to be completed and go through the various reviews by involved agencies such as Caltrans, Air Quality Management District, California Department of Fish and Game, U.S. Fish and Wildlife, and the public before a particular project could be presented at a public hearing before the Planning Commission and City Council.

Since 1970, CEQA has been a very useful tool for protecting the environment and providing the public an opportunity to participate in the decision making process. However, there are also unintended consequences of CEQA. One unintended consequence that has resulted from CEQA is the abuse of the environmental review process that at times occurs when an individual or a group opposes development. As a result of this strategy, the project may be held in litigation for a long period of time which costs both the developer and the City a significant amount of money and delay. Also the process of environmental review, such as an EIR, is extensive and lengthy to complete which is an economic disadvantage for developers in the State of California when compared to other States such as Texas and Louisiana.

Governor Brown in the State of the California Address indicated that CEQA modernization is a priority and conveyed his commitment to resolving related issues this year. In response, a coalition was formed titled "CEQA Working Group" consisting of various entities and trade organizations including Riverside County Transportation Commission (RCTC). For review, Exhibit "A" provides a list of coalition participates. Additionally, for clarification, the Policy Principles for CEQA Modernization prepared by the CEQA Working Group has also been attached as Exhibit "B". There is no financial obligation to join as an official member of the Group. Accordingly, staff respectively requests direction to submit the attached letter of support signifying the City's participation and support as shown in Attachment "C". In addition, twenty-three (23) legislators throughout the State have submitted proposals on CEQA modernization prior to the February 22, 2013 bill deadline.

Staff will continue to monitor CEQA modernization efforts through the Western Riverside Council of Governments Planning Directors Technical Advisory Committee, RCTC, the Inland Empire American Planning Association, the City's state lobbyist, and CEQA Working Group. Staff will report back to the Council at the appropriate time through City Manager's memorandums and/or e-mail.

FISCAL IMPACT: There is no fiscal impact for following on the CEQA reform activities as the staff costs is budgeted in the Fiscal Year 2012-13 budget.

PREPARED BY:

Zai Abu Bakar
Community Development Director

APPROVED BY:

Andrew J. Takata
City Manager

Attachments:
1. Resolution No. 2013-41
2. Exhibit "A" - CEQA Working Group Coalition List
3. Exhibit "B" - CEQA Working Group Policy Principles for CEQA Modernization
4. Exhibit "C" - Template Letter for Local Government Officials

RESOLUTION NO. 2013-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA SUPPORTING THE GOVERNOR AND STATE LEGISLATURES EFFORTS TO MODERNIZE THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, for the past 40 years, the California Environmental Quality Act (CEQA) has served as a vital tool to protect our environment, to protect local communities and to enhance local control by ensuring that all proposed local development projects undergo a rigorous environmental review process and that the impacts of new projects on the environment are adequately mitigated; and

WHEREAS, CEQA is an important law that ensures local governments have the information and tools to protect our local communities and to allow for citizen involvement in local land-use decisions; and

WHEREAS, today, many important local projects are being held up by CEQA challenges or even the threat of challenges, often times for reasons that have nothing to do with environmental protection or mitigation; and

WHEREAS, it is much easier to challenge a CEQA decision than any other type of local land-use decision which means that local governments must dedicate a substantial amount of time and resources – which could otherwise be spent on actual environmental mitigation or some other local purpose – taking excessive measures to protect against litigation and the threat of litigation; and

WHEREAS, CEQA challenges and the threat of CEQA challenges, also undermine the ability of local governments to approve projects that carry out important State policies such as infill development and affordable housing.

NOW, THEREFORE, BE IT RESOLVED, that the City of Banning urges the Legislature and Governor to adopt legislation that would modernize the California Environmental Quality Act to preserve the law's original intent – environmental protection and public disclosure and participation – while allowing environmentally responsible local decision-making, local economic development and jobs, and 21st century growth.

PASSED, APPROVED AND ADOPTED this 9th day of April, 2013.

_____

Deborah Franklin,
Mayor of the City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

_____
David J. Aleshire
Aleshire & Wynder, LLP

ATTEST:

_____
Marie Calderon, City Clerk
City of Banning, California

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2013-41, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 9th day of April 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Marie Calderon, City Clerk
City of Banning, California

Exhibit "A"

CEQA Working Group Coalition List

CEQA WORKING GROUP

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Coalition List

- California Alliance for Jobs
- Silicon Valley Leadership Group
- California's Coalition for Adequate School Housing
- California Hospital Association
- Transportation California
- California Transit Association
- Riverside County Transportation Commission
- California Housing Consortium
- San Diego Housing Commission
- San Francisco Housing Action Coalition
- SummerHill Apartment Communities
- California Small Business Association
- Southern California Association of Governments
- San Francisco Planning + Urban Research
- Bay Planning Coalition
- Association of California Cities Orange County
- Central City Association of Los Angeles
- Southern California Water Committee
- Pacific Merchant Shipping Association
- Associated General Contractors of California
- Los Angeles County Economic Development Corporation
- Santa Clarita Valley Economic Development Corporation
- California Chamber of Commerce
- National Federation of Independent Business California
- Los Angeles Chamber of Commerce
- Greater Antelope Valley Economic Alliance
- Bay Area Council
- Central California Council
- North Bay Leadership Council
- Orange County Business Council
- Sonoma County Alliance
- Southwest California Legislative Council
- San Gabriel Valley Economic Partnership
- Inland Empire Economic Partnership
- Valley Industry and Commerce Association
- Los Angeles County Business Federation
- Antelope Valley Board of Trade
- American Council of Engineering Companies of California
- American Institute of Architects California Council
- American Institute of Architects Los Angeles
- West Coast Lumber and Building Material Association
- Long Beach Area Chamber of Commerce
- San Francisco Chamber of Commerce
- Oakland Metropolitan Chamber of Commerce
- Hollywood Chamber of Commerce
- South Bay Association of Chambers of Commerce
- Chambers of Commerce Alliance of Ventura and Santa Barbara Counties
- Brea Chamber of Commerce
- Fresno Chamber of Commerce
- Pleasanton Chamber of Commerce
- Silicon Valley Chamber of Commerce
- San Diego Regional Chamber of Commerce
- California Association of REALTORS®

(more)

- California Construction & Industrial Materials Association
- California Building Industry Association
- California Business Roundtable
- California Business Properties Association
- California Retailers' Association
- Arcadia Association of REALTORS®
- Southwest Riverside County Association of REALTORS®
- Humboldt Association of REALTORS®
- Placer County Association of REALTORS®
- San Mateo County Association of REALTORS®
- Ventura County Coastal Association of REALTORS®
- Contra Costa Association of REALTORS®
- San Francisco Association of REALTORS®
- Santa Barbara Association of REALTORS®
- Rancon Real Estate
- Beal & Associates Inc.
- The High Country Group
- Temecula Homes and Land
- Cerrell Associates Inc.

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Exhibit "B"

CEQA Working Group Policy Principles for CEQA Modernization

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Policy Principles for CEQA Modernization

Problem: Thoughtful Reforms to CEQA Long Overdue

- When the California Environmental Quality Act (CEQA) was enacted 40 years ago, the wide array of local, state and federal environmental and land use regulations that are now on the books didn't exist. CEQA was essentially it.
- In the 40 years since, Congress and the Legislature have adopted more than 120 laws to protect environmental quality in many of the same topical areas required to be independently mitigated under CEQA, including laws like the Clean Air Act, Clean Water Act, Endangered Species Act, GHG emissions reduction standards, SB 375 and more.
- Despite these stringent environmental laws and local planning requirements, public and private projects throughout the state are commonly challenged under CEQA even when a project meets all other environmental standards of existing laws.
- Many lawsuits are brought or threatened for non-environmental reasons and often times these lawsuits seek to halt environmentally desirable projects like clean power, infill and transit.
- It is time to modernize CEQA to conform with California's comprehensive environmental laws and regulations. Thoughtful CEQA reforms can preserve the law's original intent – environmental protection – while preventing special interest CEQA abuses that jeopardize community renewal, job-creation and the environment.

SOLUTION: Modernize CEQA to Protect Environment and Informed Public Participation, While Limiting Abuses

The Working Group Supports the Following Four Principles to Modernize CEQA:

1. Integrate Environmental and Planning Laws

- ✓ CEQA should continue to serve as *the* state environmental law for environmental impacts not regulated by standards set forth in other environmental and planning laws adopted since 1970.
- ✓ However, where a federal, state or local environmental or land use law has been enacted to achieve environmental protection objectives (e.g., air and water quality, greenhouse gas emission reductions, endangered species, wetlands protections, etc.), CEQA review documents like EIRs should focus on fostering informed debate (including public notice and comment) by the public and decision makers about how applicable environmental standards reduce project impacts.
- ✓ State agencies, local governments and other lead agencies would continue to retain full authority to reject projects, or to condition project approvals and impose additional mitigation measures consistent with their full authority under law other than CEQA.

(more)

2. Eliminate CEQA Duplication

- ✓ As originally enacted, CEQA did not require further analysis of agency actions that already complied with CEQA-certified plans. But a 1987 court decision dramatically changed CEQA's application and required CEQA to be applied even for projects that complied with such laws.
- ✓ Reforms should return the law to its original intent and not require duplicative CEQA review for projects that already comply with approved plans for which an environmental impact report (EIR) has already been completed – particularly since existing laws also require both plans and projects to comply with our stringent environmental standards.
- ✓ Local governments and other lead agencies would continue to retain full authority to reject projects or to condition project approvals and impose additional mitigation measures, consistent with their full authority under law other than CEQA.

3. Focus CEQA Litigation on Compliance with Environmental and Planning Laws

- ✓ CEQA lawsuits would still be allowed to be filed for failure to comply with CEQA's procedural and substantive requirements, including, for example adequate notice, adequate disclosure, adequate mitigation of environmental effects not regulated by other environmental or planning law, adequate consideration of alternatives to avoid unmitigated significant adverse impacts.
- ✓ However, CEQA lawsuits could not be used to challenge adopted environmental standards, or to endlessly re-challenge approved plans by challenging projects that comply with plans.
- ✓ Environmental and other public advocacy efforts to enact environmental protection laws should not be affected by any CEQA reform, and limiting CEQA litigation abuse can also inform advocacy efforts to revisit standards or plans.
- ✓ Finally, "real" environmental lawsuits - seeking to enforce true environmental objectives - could still be pursued against agencies that fail to make regulatory or permitting decisions in compliance with standards and plans.
- ✓ However, the current system of broad brush CEQA lawsuits that can be filed by any party for any purpose to challenge any or all environmental attributes of projects that comply with standards and plans are an outdated artifact of the "anything goes" environment of 1970, which now hinders both environmental improvement and economic recovery.

4. Enhance Public Disclosure and Accountability

- ✓ CEQA would continue to mandate comprehensive environmental disclosure and informed public debate for all environmental impacts, including those covered by standards set in other environmental and planning laws.
- ✓ CEQA's public disclosure principles are enhanced by requiring an annual report of project compliance with required mitigation measures made electronically available to the public as part of the existing Mitigation Monitoring and Reporting Plan process.
- ✓ CEQA lawsuits could no longer be filed by "anonymous" unincorporated associations with shadow members and hidden interests. Anyone seeking to enforce CEQA through litigation needs to disclose who they are, similar to campaign finance disclosure laws and court mandates for third parties seeking to file advocacy briefs in lawsuits.

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CEQA Modernization Reforms
Questions & Answers

Do we need CEQA reform - and what do the reforms being pursued by the CEQA Working Group do?

CEQA was adopted in 1970, at a time when it was *the* environmental law for our state: there was no federal or state Clean Air Act, Clean Water Act, Endangered Species Act, National Historic Preservation Act, hazardous waste laws, or any of the other environmental laws (and thousands of federal and state regulations), or dozens of federal, state, regional and local agencies that now administer these laws to protect our environment and the health and safety of our communities.

After 40 years and the enactment of thousands of new environmental protection laws and regulations, it's time to update CEQA to better integrate our environmental standards and policy priorities, without diminishing environmental protection or informed public participation in the decision to consider or approve plans and projects. That's what the reforms do:

- CEQA will continue to serve as *the* state environmental law for environmental impacts that are not regulated by standards set in other environmental and planning laws adopted since 1970.
- CEQA will continue to mandate comprehensive environmental disclosure and informed public debate for all environmental impacts, including those covered by standards set in other environmental and planning laws.
- An agency's authority to reject projects, or to condition project approvals on requirements that are more stringent than applicable standards, are preserved based on the legal authority - other than CEQA - vested in public agencies (e.g., constitutional police powers and other statutory authority conferred on cities and counties).
- Duplicative CEQA lawsuits are eliminated for projects that comply with plans for which an Environmental Impact Report (EIR) has already prepared.
- CEQA's public disclosure principles are enhanced by requiring an annual report of project compliance with required mitigation measures made electronically available to the public as part of the existing Mitigation Monitoring and Reporting Plan process.
- With limited exceptions, CEQA lawsuits may still be filed for failure to comply with CEQA's procedural and substantive requirements (e.g., adequate notice, adequate disclosure, adequate mitigation of environmental effects not regulated by other environmental or planning law, adequate consideration of alternatives to avoid unmitigated significant adverse impacts, etc.).
- To resolve conflicting judicial interpretations, CEQA is also clarified to assure that changes to private views and aesthetics are not appropriately considered as "impacts" for CEQA purposes.
- No changes to "standing" (the right of a party to file a CEQA lawsuit) are proposed, nor do the reforms pursued by the CEQA Working Group) change the opportunity of a prevailing party to recovery attorneys' fees. CEQA will continue to be subject to private enforcement lawsuits.

How do the reforms integrate environmental standards with CEQA?

California is a national leader in environmental protection, and as a state we are committed to protecting the environment, human health and safety. CEQA's 1970 vintage predates our 40-year history of passing thousands of stringent new environmental standards and CEQA represents a different paradigm for environmental protection. CEQA requires costly, often multi-year consultant studies of all potential environmental impacts, a project-specific determination by consultants, staff and agency decisionmakers as to whether each impact is "significant" even if it complies with other environmental standards, and a project-specific mandate to adopt "all feasible" measures - including mitigation measures, alternate project designs, and even alternate project locations - to avoid or further reduce significant impacts. As a result, even if a project complies with all of California's stringent environmental standards, CEQA lawsuits can be filed and a judge can overturn project approvals and require more study.

The reforms pursued by the CEQA Working Group would create a level playing field for California state law by excluding from the scope of CEQA litigation impacts for which there are adopted environmental standards for which the EIR mandates compliance.

How do the reforms protect the environment and public health while eliminating duplicative CEQA review?

CEQA review is required not just for projects, but also for plans or programs adopted by a public agency. CEQA also requires environmental impacts to be considered at the earliest phase of public agency decisionmaking to assure that environmental and public health issues are considered early - before an agency is committed to a particular course of action.

Before a 1987 court decision, duplicative CEQA review was not required for projects that complied with land use plans like General Plans and zoning designations. Since then, new rounds of CEQA review have been required every time a project receives a "discretionary approval" from any state or local agency, even if the project complies with both environmental standards and applicable plans. Each discretionary approval creates a new CEQA litigation opportunity.

While the bill continues to require lead agency conduct project level environmental review even for projects that are consistent with applicable plans, it would end duplicative CEQA litigation for land use projects that comply with the land use type, density and intensity designations in a land use plan that has been adopted based on an EIR, and for projects included in other types of plans that have under gone CEQA review, provided that:

- Such projects are required to comply with applicable mitigation measures from the Plan EIR; and
- Annual reports are filed electronically, and made available to the public on a public website, describing the project's compliance with applicable mitigation measures to allow for public monitoring and auditing of plan implementation activities.

While plans may have "program-level" or "programmatic" EIRs, such EIRs must still address all CEQA environmental and public health impacts, and must still assess the environmental significance of plan approval and implementation, and require feasible mitigation measures to reduce or avoid adverse impacts.

Less than 2% of CEQA decisions are challenged in litigation - there is no CEQA litigation abuse.

CEQA abuse occurs not only through meritless lawsuits, but also by the *threat* of litigation. Considering that the outcome of CEQA litigation is only 50-50 at best (even when a full EIR has been undertaken) the mere threat of litigation is enough to cause uncertainty and stall or prevent projects from going forward.

We recently passed a number of CEQA reforms. Shouldn't we give these time to work?

Recent CEQA legislative reform efforts have focused on providing "exemptions" from CEQA for projects that meet a complicated matrix of qualifying criteria, or of offering very limited reductions in either the scope or schedule required to comply with the CEQA process. These efforts have failed. Special exemptions for a minor handful of projects have not benefited California.

In 2011, two "reform" statutes were enacted that purported to streamline the CEQA compliance process.

- AB 900 eliminated superior court review for qualifying employment and renewable energy projects, and established an elaborate enrollment process whereby both Governor's approval and further legislative review was required for projects seeking this status. SB 900 was challenged as unconstitutional in a recent lawsuit filed by the Planning and Conservation League, and only one project has completed the enrollment process. Further, AB 900 expires in two years.
- SB 226 was enacted to create an exemption for solar PV rooftop installations, which were already commonly approved throughout California through categorical exemptions and Negative Declarations. AB 226 also attempts to create CEQA streamlining for qualified infill projects that comply with land use plans including "performance standards" established to avoid or minimize impacts. The regulations needed to implement this part of AB 226 are not scheduled to become effective until December 2012, and litigation has again been threatened over the issue of whether streamlined CEQA documents required under AB 226 for infill projects are subject to a "fair argument" standard of review or the "substantial evidence" standard of review. If the fair argument test is ultimately determined, through litigation, to apply to AB 226 streamlining, it is highly unlikely that project sponsors or lead agencies will use AB 226. Even if the substantial evidence test does apply, the judicial loss rate remains 50/50 - a coin toss.

None of the adopted reforms has had any actual effect (i.e., none have resulted in projects being approved or built), and all are subject to known severe limitations on availability and practical effect.

Why not just give exemptions to specialty projects?

Providing exemptions to a small number of projects doesn't address the underlying need to bring CEQA up to date with current environmental law. It's a matter of fairness. Small infill projects, affordable housing, schools, small businesses and other local projects should be entitled to reforms, not just select special projects. Additionally, project by project CEQA exemption bills remove entire projects from the requirements of CEQA. The reforms pursued by the CEQA Working Group maintain and enhance CEQA's goal to ensure environmental disclosure and informed public debate by (1) preserving the requirement to develop environmental documents for projects, and (2) mandating public release of annual reports disclosing project compliance with required mitigation measures.

Doesn't your proposal gut California's environmental law that protects our air, water and public health?

No. Federal and state Clean Air, Clean Water, and toxic materials handling laws protect air, water and public health based on science and laws - and these standards are in effect every day, for thousands of regulated activities, and violators are subject to civil and criminal prosecution.

The reforms retain all existing California environmental laws and regulations, and ensure that CEQA remains a tool to evaluate the impacts of a proposed project, to provide adequate input from the community, and to require mitigation to reduce projects' impacts on the environment.

Can project opponents still sue under CEQA?

Yes, with limited exceptions opponents can challenge whether lead agencies complied with the procedural requirements of CEQA (e.g., adequate project descriptions, adequate notice and public hearings, etc.). Opponents can also sue under CEQA's substantive requirement to feasibly mitigate significant adverse impacts for topical areas that are not subject to federal, state or local standards or plans. Opponents cannot sue an agency under CEQA over whether project impacts that are subject to federal, state or local standards or plans are significant or adequately mitigated for CEQA purposes.

Can communities sue if they believe projects will not comply with applicable federal, state or local standards and plans?

Yes, opponents can sue the agency responsible for implementing the standard or plan requirements for failure to enforce its standards or plans if they believe a project is being unlawfully considered by another agency. An opponent can sue under a "writ of mandate" - the same legal mechanism used for CEQA lawsuits - to compel an agency to fulfill that agency's obligation to enforce that agency's standards and plans, but they cannot sue such agencies under CEQA.

Can communities sue if they don't like a standard or plan?

Yes, but not under CEQA. The reforms pursued by the CEQA Working Group do not change other existing laws, which allow lawsuits to be filed against agencies that unlawfully adopt or implement regulations and plans that violate the statutes. To the extent CEQA was being used by advocacy groups to bypass the legislative process that resulted in adoption of a statute, and use CEQA lawsuits to create "another bite at the apple" by re-opening the adequacy of standards adopted by statute (e.g., AB 32 or SB 375), the reforms eliminate this CEQA abuse and upholds the role of elected officials in making policy decisions about environmental standards.

Does this proposal change the fair argument standard?

No. Negative Declarations, and categorical exemptions for projects with "unusual circumstances", will continue to be subject to the "fair argument" standard of review for topical areas not superseded by applicable environmental standards and plans.

Will this prohibit groups from suing because of aesthetics?

Yes in part. Aesthetic impacts to designated public scenic resources such as highways continue to be covered by CEQA, and can be the subject of a lawsuit. The reforms clarify that changes to private views and other aesthetic design issues are not properly considered impacts for CEQA purposes.

Will Native American Cultural considerations be protected?

Yes. The reforms specifically clarify that there will be no change in the consideration and protection of Native American resources under CEQA.

What is the problem when 99% of CEQA studies go unchallenged in court?

The judicial loss rate remains 50/50 - a coin toss - under CEQA litigation. Such lawsuit outcomes typically emerge 2-4 years after project approval, and project approval itself typically follows 1-3 years of study, community outreach, and agency permitting. In other words, projects that are challenged under CEQA are substantially affected, often derailing projects in their entirety. The reforms will address such outcomes without negatively impacting the environment.

Does the bill exempt large or high-polluting projects from environmental review?

The bill does not create *any* exemptions for *any* project: CEQA continues to apply to all types of projects. It also preserves full disclosure, informed debate, and the right of communities and lead agencies to impose mitigation measures and other conditions to assure that community-based standards and concerns are met. The bill does prevent CEQA from being used as a basis for suing projects that comply with environmental standards, or with plans that have already gone through the CEQA review process.

Do the reforms pursued by the CEQA Working Group Weaken SB 375, Greenhouse Gas Law or other CEQA Infill Reforms?

No. In fact, the reforms are critical to the successful implementation of SB 375, which requires California to adjust our land use pattern to encourage higher density infill and transit-oriented development. Community plans for implementing SB 375 have repeatedly been delayed and threatened with derailment by CEQA lawsuits. For example, a CEQA lawsuit has delayed implementation of the San Diego Sustainable Communities Plan - which CARB approved as meeting SB 375 mandates. And scores of infill projects have also been sued under CEQA, even though these projects comply with applicable standards and adopted community plans that have already gone through the CEQA approval process. We cannot achieve SB 375 under CEQA's current structure, which allows anyone to sue any project - often multiple times - even if projects comply with law and will help implement SB 375.

Will the proposal promote urban sprawl?

No. It only applies to projects that comply with applicable environmental standards (including SB 375 and other infill-oriented mandates) or land use and other plans that have been adopted in compliance with CEQA. It also requires full compliance with standards and plans requiring preservation and mitigation of parks and agricultural lands.

Does the proposal exempt projects based on outdated plans?

No. The bill's plan-consistency provisions require projects to comply with environmental standards and applicable plans. If an outdated plan does not comply with an applicable environmental standard, then the project would be required to meet the environmental standard - and the project's compliance with an outdated plan provides no legal shelter from a lawsuit challenging a project that violates environmental standards.

Would the reforms apply even where plans conflict with one another?

The bill's plan-consistency provisions would require compliance with applicable environmental standards and applicable plans (including mitigation measures). The proposal makes no change to existing law, which requires consideration of all applicable plans and informed disclosure and

appropriate resolution of any plan conflicts, including potential conflicts in density, intensity and use restrictions.

Aren't you falsely blaming our economic problems and job loss on CEQA when the real culprit is the mortgage meltdown, tight availability of credit, and slow consumer demand?

There are a number of factors contributing to the economic meltdown. Both before and during this recession, however, the current version of CEQA is an obstacle to achieving the next generation of necessary improvements. CEQA's power to derail progress means it is now an obstacle to the change we have decided is critical for the environment and public health: transit-oriented, higher-density development patterns; renewable power; a new manufacturing base for Greentech; and major new infrastructure projects like high speed rail and Bay Delta and water supply protections.

Aren't the real interests behind this proposal the polluters and exploiters of our natural resources who will profit from this destructive plan?

A broad coalition of groups representing schools, hospitals, public transit, affordable housing, renewable energy, local governments and many others agree it's time to reform CEQA to preserve its original intent – environmental protection and information – while stamping out abuses of the CEQA process brought for non-environmental reasons.

Exhibit "C"

Template Support Letter for Local Government Officials

Local Government Officials in Support of CEQA Modernization

An open letter to the California Legislature.

January 2013

Dear Governor Jerry Brown, Members, California State Senate and Assembly:

We, the undersigned local elected officials, urge you to adopt legislation that would modernize the California Environmental Quality Act (CEQA) to preserve the law's original intent – environmental protection and public disclosure and participation – while stamping out abuses to CEQA that undermine local control, local economic development and jobs, and environmentally responsible growth.

CEQA is an important law to ensure local governments have the information and tools to protect our local communities, and to allow for citizen involvement in local land-use decisions.

In the 43 years since CEQA was passed, Congress and the Legislature have adopted more than 120 laws to protect the environment including air quality, water quality, species protection, greenhouse gas reduction, responsible land-use planning and more. Local governments have also adopted countless local land-use laws, general plans and regulations that regulate growth and development to reflect the needs of local communities.

However, because CEQA has not received a major update in four decades, many important local projects are being held-up by CEQA challenges – even when a project complies with all of California's toughest-in-the-nation environmental standards and when projects are approved by local governments after complying with all local standards and required mitigation.

Often times, these lawsuits and threats of litigation undermine the authority of locally elected officials, because the courts or judges override local decision making and local control. CEQA challenges also undermine the ability of local governments to approve vital local community projects.

We, the undersigned, support efforts to modernize CEQA to preserve the law's original intent – environmental protection and public disclosure and participation – while eliminating challenges that are brought even after projects comply with all applicable local, state and federal laws, regulations and approvals.

We look forward to working with you to promote meaningful and responsible CEQA reform this year.

Sincerely,

☐ ***I agree to be publicly listed on this letter as an endorser of CEQA modernization.***

Name *Title, City*

Street Address *City* *Zip* *County*

Phone Number *Email Address*

Signature (Required) *Date*

Please complete form and email or fax to mgamble@bcfpublicaffairs.com or 916-442-3510

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CITY COUNCIL AGENDA

DATE: **April 9, 2013**

TO: **City Council**

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

SUBJECT: **Resolution No. 2013-42, "Approving an Amendment to the Baseline Agreement with the California Transportation Commission (CTC) and the City of Banning for the Sunset Avenue Grade Separation"**

RECOMMENDATION: Adopt Resolution No. 2013-42:

I. "Approving an Amendment to the Baseline Agreement with the California Transportation Commission (CTC) and the City of Banning for the Sunset Avenue Grade Separation."

II. Authorizing the City Manager to execute the Amendment to the Baseline Agreement with the California Transportation Commission (CTC) and the City of Banning for the Sunset Avenue Grade Separation.

JUSTIFICATION: It is essential to approve the Amendment to the Baseline Agreement with the California Transportation Commission (CTC) in order to move forward with the Construction phase of the project.

BACKGROUND: On May 27, 2008 the City Council approved Resolution No. 2008-57 for the Project Baseline Agreement for the California Transportation Commission for a Trade Corridors Improvement fund (TCIF) grant to fund the Sunset Avenue Grade Separation.

The Agreement shall remain in effect except for modifications to the project schedule as per the attached Project Programming Request, Exhibit "A".

FISCAL DATA: There is no fiscal impact.

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. 2013-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AMENDMENT TO THE BASELINE AGREEMENT WITH THE CALIFORNIA TRANSPORTATION COMMISSION (CTC) AND THE CITY OF BANNING FOR THE SUNSET AVENUE GRADE SEPARATION

WHEREAS, it is essential to approve this amendment in order to move forward with the construction phase of the project; and

WHEREAS, on May 27, 2008 the City Council approved Resolution No. 2008-57 for the Project Baseline Agreement for the California Transportation Commission for a Trade Corridors Improvement fund (TCIF) grant to fund the Sunset Avenue Underpass project; and

WHEREAS, it is necessary to amend the agreement to adjust the project schedule, see attached Exhibit "A": and

WHERAS, there is no fiscal impact to the budget.

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

SECTION 1. The City Council adopts Resolution No. 2013-42 approving an Amendment to the Baseline Agreement with the California Transportation Commission (CTC) and the City of Banning for the Sunset Avenue Grade Separation."

SECTION 2. The City Manager is hereby authorized to execute the Amendment to the Baseline Agreement with the California Transportation Commission (CTC) and the City of Banning for the Sunset Avenue Grade Separation.

PASSED, APPROVED, AND ADOPTED this 9th day of April, 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. 2013-42 was duly adopted by the City Council of the City of Banning at the regular meeting thereof held on the 9th day of April, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

PROJECT PROGRAMMING REQUEST

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

PROJECT PROGRAMMING REQUEST

DTP-0001 (REV. 6/11)

General Instructions

☐ New Project	☑ Amendment (Existing Project)				**Date:**	03/14/13
District	**EA**	**Project ID**	**PPNO**	**MPO ID**		**TCRP No.**
08	33470	0800000600	1122			

County	**Route/Corridor**	**PM Bk**	**PM Ahd**	**Project Sponsor/Lead Agency**	
RIV				Banning, City of	
				MPO	**Element**
				SCAG	LA

Project Mgr/Contact	**Phone**	**E-mail Address**
Kahono Oei	(951) 922-3130	koei@ci.banning.ca.us

Project Title

Sunset Avenue Grade Separation

Location, Project Limits, Description, Scope of Work, Legislative Description

In the city of Banning on Sunset Avenue. Construct an underpass at the Union Pacific Railroad crossing (TCIF 46)

Component	**Implementing Agency**	**Reimbursements**
PA&ED	Banning, City of	
PS&E	Banning, City of	
Right of Way	Banning, City of	
Construction	Banning, City of	

Legislative Districts

Assembly:	65	**Senate:**	37
Congressional:	41		

Purpose and Need

The purpose of the project is to improve safety, decrease travel times for cars, trucks, and trains, and reduce harmful emissions caused by idling vehicles. Forty-six trains pass through the crossing on the average day, causing approximately 86.3 minutes (1.4 hours) of blocking delay daily. The effects of these stoppages are felt not only on the local streets but also on the I-10 freeway that closely parallels the UPRR tracks in that area.

Project Benefits

The benefits include improving safety by eliminating vehicle/train conflicts at the crossing while removing delays caused by passing trains which will also improve traffic flow at the adjacent I-10 freeway ramps. Emergency response times will decrease to and from the south side of the City. Train delays on the Union Pacific Railroad tracks will also be eliminated. The project would benefit air quality by eliminating idling vehicles when a train is at the crossing.

Project Milestone			**Existing**	**Proposed**
Project Study Report Approved				
Begin Environmental (PA&ED) Phase			06/10/10	
Circulate Draft Environmental Document	**Document Type**	EIR/EIS	/ /	
Draft Project Report			/ /	
End Environmental Phase (PA&ED Milestone)			02/28/11	
Begin Design (PS&E) Phase			05/10/11	
End Design Phase (Ready to List for Advertisement Milestone)			01/31/13	03/07/13
Begin Right of Way Phase			05/10/11	
End Right of Way Phase (Right of Way Certification Milestone)			02/28/13	
Begin Construction Phase (Contract Award Milestone)			06/30/13	09/30/13
End Construction Phase (Construction Contract Acceptance Milestone)			06/30/15	09/30/15
Begin Closeout Phase			07/01/15	10/01/15
End Closeout Phase (Closeout Report)			11/30/15	01/31/16

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

CITY COUNCIL AGENDA
CONSENT ITEM

DATE: **April 9, 2013**

TO: **Honorable Mayor and City Council**

FROM: **Andy Takata, City Manager**

SUBJECT: **Adopt Resolution No. 2013-40, Approving a Professional Services Agreement with Innovative Federal Strategies, LLC to provide services in Federal Legislative Advocacy and Governmental Affairs.**

RECOMMENDATION: Staff respectfully requests the City Council adopt Resolution No. 2013-40:

I. Approving a Professional Services Agreement with Innovative Federal Strategies, LLC to provide services in Federal Legislative Advocacy and Governmental Affairs.

II. Authorizing the City Manager to negotiate and sign the Professional Services Agreement with Innovative Federal Strategies, LLC.

JUSTIFICATION: At present, the City of Banning does not utilize any firms to provide federal legislative services. The City of Banning does utilize the services of Joe A. Gonsalves and Son for State legislative services. The primary focus of a Federal Legislative Advocate is to assist the City with improving its efforts to influence legislation, capture revenues available to local governments and assist the City in identifying, applying for and receiving competitive grants and other discretionary funding available to the City.

BACKGROUND: In December 2012, a total of 22 legislative consulting firms were contacted and provided with a Request for Proposals (RFP) for Federal Legislative Advocacy (Lobbying) Services. A total of 13 responded to the RFP as follows:

1. District Strategies
2. Alcalde & Fay Government
3. Thomas Walters & Associates, Inc.
4. David Turch & Associates
5. Lobbyit.com
6. Innovative Federal Strategies, LLC
7. Townsend Public Affairs
8. Van Scoyoc Associates
9. Waterman & Associates
10. The Ferguson Group, LLC
11. Cliff Madison Government Relations, Inc.
12. Catalyst
13. Foley & Company, Inc. Government & Public Affairs

At a regular meeting held November 13, 2012 the City Council adopted Resolution No. 2012-89, Establishing the Intergovernmental Communications and Advocacy Committee. At which time one of the powers of the committee was to act as an evaluation committee in the review and selection of the City's State and Federal Lobbyists through a normal and customary RFP process utilized to solicit interested firms. The Committee was tasked with interviewing top candidates and to make recommendations to the City Council and City Manager, or his designee, as to who/what firm(s) would best serve as our State and Federal Lobbyists.

The Intergovernmental Communications and Advocacy Committee held candidate interviews on March 20, 2013. The Committee met with the firms that met the requirements for qualified staff and experience with California cities. At the conclusion of the interviews, out of the three top candidates, Innovative Federal Strategies, Inc. was selected to serve as the City's Federal lobbyist.

PROPOSAL ANALYSIS:

Innovative Federal Strategies, LLC (IFS) is fully able to perform the services of Federal legislative advocacy and consulting for the City of Banning as validated in the attached RFP response labeled Exhibit "A". The firm's leadership and staff have extensive experience in performing similar work for current and past municipalities, and have been extremely successful in doing so. IFS has achieved an unprecedented level of success in helping advocate for federal funding and policy issues on behalf of municipalities. Each principal, associate and consultant member of IFS has an intimate knowledge of the appropriate process, and several are experts in the representation of local governments.

The primary scope of services includes IFS to serve as a reliable and consistent conduit of information, to obtain and monitor all bills, resolutions, files, journals, histories, etc., to maintain a computer bill tracking system, to monitor and update all legislative positions established by the City on a regular basis, to provide reports, to present the City's position to key House and Senate Members, staff, Committees, Federal agencies (as appropriate) and other interest groups, and to coordinate with the City to prepare a legislative/regulatory program.

Please see the attached Exhibit "B", Professional Services Agreement, which contains the full scope of services as an exhibit.

STRATEGIC PLAN INTEGRATION: To facilitate securing grant funding in the areas of economic development, law and code enforcement, streets and highways, etc. to meet the strategic plan goals adopted by the City Council.

FISCAL IMPACT: Funding for these services will be paid from the General Fund and Electric Fund. The fee for services to be provided by Innovative Federal Strategies, LLC is $3,500 per month which equates to $42,000 annually plus related travel expenses. There is sufficient budget for the services through the end of the current fiscal year. Budget adjustments will be necessary for the FY14 budget.

RECOMMENDED BY:

The Intergovernmental Communications and Advocacy Committee

APPROVED BY:

Andy Takata
City Manager

REVIEWED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

Attachments:

Exhibit A – Proposal
Exhibit B – Professional Services Agreement

EXHIBIT "A"

INNOVATIVE FEDERAL STRATEGIES, LLC
RESPONSE TO CITY OF BANNING'S
REQUEST FOR PROPOSALS (RFP)
JANUARY 17, 2013

INNOVATIVE FEDERAL STRATEGIES, LLC

Comprehensive Government Relations

January 17, 2013

Ms. Marie A. Calderon
City Clerk, City of Banning, CA
99 E. Ramsey Street
Banning, CA 92220

Dear Ms. Calderon;

It is with pleasure that I respond to the City of Banning's Request for Proposals (RFP) for Federal Legislative Advocacy Services. Innovative Federal Strategies LLC (IFS) is honored to respond and well equipped to perform every service listed in the RFP. We have a long track record of success in helping our clients in many areas and I believe that our firm is uniquely suited to best represent the City's interests before the federal government.

IFS is a bipartisan firm whose members have one hundred years of combined federal service in the House of Representatives, the U.S. Senate, and the Departments of Agriculture, Air Force, Commerce, Navy, and Treasury. Many of the members of the firm have unique expertise in the intricate legislative process that Congress uses for annual authorizations, appropriations, regulatory and policy issues, and agency oversight. We also understand the complex issues that face local governments in this difficult budgetary climate.

I want to express my appreciation for being considered to represent the City of Banning. If you have any questions, please do not hesitate to contact me.

Sincerely,

Letitia White

Letitia White
Innovative Federal Strategies LLC

511 C Street, NE • Washington, DC 20002 • *Office* 202.347.5990 • *Fax* 202.347.5941 • www.innofed.com

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Qualifications of Innovative Federal Strategies to Represent the City of Banning

A) Overall Capabilities and Qualifications of IFS

Innovative Federal Strategies, LLC (IFS) is fully able to perform the services of federal legislative advocacy and consulting for the City of Banning. Our firm's leadership and staff have extensive experience in performing similar work for current and past clients, and we have been extremely successful in doing so. We believe that we have achieved an unprecedented level of success in helping advocate for federal funding and policy issues on behalf of our California-based clients. Each principal, associate and consultant member of the firm has an intimate knowledge of the appropriations process, and several are experts in the representation of local governments.

IFS is a bipartisan firm whose members have over 100 years of combined federal service in the House of Representatives, the U.S. Senate, and the Departments of the Navy, Agriculture, Commerce, Treasury, and Air Force. Many of the members of the firm have unique expertise in the intricate legislative process that Congress uses for annual authorizations, appropriations, regulatory and policy issues. We have been in business for 20 years, and our office is located on Capitol Hill in Washington, D.C.

We believe that bipartisanship is a critical component of our firm's success for our clients, especially municipalities. It is also our strong belief that the issues facing cities are not partisan in nature but rather are ones that deserve the full support of both sides of the political spectrum. All of the members of our firm are comfortable working with Republican and Democrat offices in order to meet our clients' needs.

We are a Limited Liability Corporation with four Principals: Letitia White, Heather Hennessey, Bill Lowery and Jean Denton. David Kilian is our Managing Director as well as an Appropriations Specialist; John Little is our Legislative Analyst who specializes in military and national security issues; Susan Carr is an in-house consultants and Legislative Analyst who works on domestic issues such as transportation, water and economic development and also specialize in appropriations; Stacy Fuller and Drew Tatum provide both legislative and administrative support for our team; and Anne Grady is Letitia White's Executive Assistant.

Working with Congressional sponsors, members of the firm have participated in successful funding efforts on behalf of local government clients for a variety and mix of appropriations and authorizations. We are hands-on and success-oriented, and we urge our clients to focus on issues that have the most impact and the best chance of success. We also have a deep understanding and appreciation for the burdens placed on local governments in these times of decreasing budgets at the federal and state level.

We believe the most effective representation of a local government involves arranging access for local officials at crucial times to key decision-makers at the federal level. We create an ongoing dialogue between the local government officials and their federal counterparts, facilitated by our experience and breadth of contacts so that the client is pro-active in the debate regarding their

issues. IFS works with clients to develop the most effective advocacy strategy given the relevant issues and the existing political landscape. We devote an extensive amount of time to clients in order to immerse ourselves in relevant issues, understand the clients' perspectives and work hand-in-hand with our clients to devise the most effective strategy to achieve their goals.

Answers to the specific questions are provided below in the order in which they are asked in the RFP:

1) Individuals who will be working for the City of Banning and the function of each person:

Letitia White and Heather Hennessey will be responsible for the City's contract, with support from the rest of the IFS team. They will work in a collaborative way with City leadership to ensure that the City is always served by one of the firm's partners. In addition, IFS has a long standing policy of giving each of our clients our firm's full resources at all times. We are pleased to offer this very successful strategic service to clients; by doing so we are able to tap into each staff member's specific subject expertise and cover an incredibly wide variety of issue areas on both sides of the aisle in both the House and Senate, the Administration, and agencies.

Biographies for Letitia and Heather are provided here, and the biographies for the rest of the IFS team are attached at the end of this proposal.

LETITIA WHITE

Letitia White is a Principal of Innovative Federal Strategies LLC who served as a key staff member in the House of Representatives with 21 years of federal service. Having worked in both the House and the Senate, she has a unique and comprehensive understanding of the federal legislative process. As a result, she has long-standing relationships with a number of Members of Congress, their staff, and professional staff members on many Congressional Committees.

As a principal in Innovative Federal Strategies LLC, she represents before Congress and the Executive Branch a number of major corporations as well as a significant number of smaller high-technology companies and non-profit organizations to include the Battelle Memorial Institute. She also represents various cities like the City of San Bernardino and the City of Victorville. Letitia has a keen interest in mentoring small businesses, to include both representing their interests and assisting them in networking to achieve synergy on common objectives. She is a participating member on several Boards of Advisors.

Letitia White has expertise in aerospace, commercial and military aviation, and remotely operated aircraft systems and sensors. She also has a wide range of experience in domestic issues and has worked very closely with cities, counties, hospitals and water districts on a variety of their requirements such as flood control, water conservation, all modes of transportation and funding, community and economic development, hospital infrastructure, healthcare and welfare programs. Her extensive work in these areas has rounded out this firm's ability to provide a wide range of services to its clients on programs in multiple government departments and agencies.

She began her career in Congress with the late Senator John Heinz (D-PA). For many years she worked for Congressman Jerry Lewis (R-CA), former Chairman of the House Appropriations Committee. Within Congressman Lewis' office Letitia served in most of the functions typically found in a Congressional office. When Congressman Lewis served in a leadership position in the Republican Party in the early 1990s, Letitia served as his Senior Policy Advisor for the House Republican conference. Since very few of the 435 Members of Congress attain House leadership positions, she was afforded a valuable and very unique perspective on not only appropriations but the entire legislative process.

To support Congressman Lewis in his role on the House Appropriations Committee, Letitia was at various times his primary staff for appropriations issues in the Defense, Legislative Operations, Transportation, Energy and Water Development, and Interior appropriations bills. When Congressman Lewis became Chairman of the House Appropriations Subcommittee on Defense, Letitia served as his Appropriations Associate, which among other duties, required daily interaction with 10 subcommittee staff members, some of whom remain on the Committee today. She acted with and for Congressman Lewis to prepare his questions for hearings, and in his meetings with Members of Congress, high-ranking officials of the Executive Branch, constituents, and Congressional staff members. To perform effectively she formed long-term relationships with Congressional staff in Members offices, the House and Senate Armed Services Committees, and the Senate Appropriations Committee.

Letitia has strong relationships with members of both parties. In December 2011, *National Journal* and the *First Street Research Group* named her one of the 30 most powerful lobbyists in Washington. In July 2004, Letitia White was named by *The Hill* newspaper as one of the top eight Defense lobbyists in Washington, D.C. She is a graduate of Stephens College in Columbia, Missouri and attended Richmond College in London, England.

HEATHER McNATT HENNESSEY

Heather McNatt Hennessey is a Principal of Innovative Federal Strategies LLC. She has seven years of service in the House of Representatives, including two years as Chief of Staff for Congressman Jack Kingston of Georgia. Her diverse experience in Washington, both in public service and as an advisor to clients in the private sector, has given her deep insight into the complex federal legislative process and expertise in a broad spectrum of policy issues from many perspectives. Both on Capitol Hill and as a consultant in the private sector, Heather worked directly with a wide variety of private and public entities as they presented their legislative and appropriations agenda. She has hands-on experience with municipalities, hospitals, schools, military bases and private companies.

Heather's years of public service in the office of Congressman Jack Kingston included positions as the Congressman's Chief of Staff, Legislative Director and Counsel. Initially, Heather was personally responsible for handling individual legislative policy issues. Those duties led into a position as Legislative Director and management of the entire legislative portfolio of the Congressman's office. During the Congressman's tenure as Chairman of the Legislative Branch Appropriations Committee, Heather served as his primary staff consultant. She directly supervised 20 employees.

In addition to her duties as Chief of Staff, Heather also served as Representative Kingston's Appropriations Associate. In this capacity, she had responsibility for all aspects of Congressional hearings in which the Congressman participated, to include reviewing witness statements, meeting with senior agency officials, preparing questions for use by the Congressman, preparing the Congressman for hearings, attending hearings, and working with Committee staff to address the Congressman's issues and concerns. She also made recommendations to the Congressman on issues to be addressed in each of the twelve annual appropriations bills that address every function in the federal government. She also participated in Committee and House floor debate and procedures for passing legislation, as well as interfacing to Senate offices as legislation became law.

As one of only 435 Chiefs of Staff to Members of Congress in the House of Representatives, Heather participated in a number of leadership functions unique to that position. This included working with party leadership and with other Members of the Georgia delegation to advance common objectives. On a daily basis she worked with many Members of Congress, their staffs, military general officers, senior federal agency officials, senior corporate leaders, and the press as they brought issues before the Congressman or to work issues with them on behalf of the Congressman. She also regularly attended Chief of Staff luncheons and training sessions. In doing so, she developed strong professional ties with key staff on Capitol Hill. She is especially knowledgeable about the Appropriations process and Healthcare, Transportation and Defense appropriations issues.

A native of South Georgia, Heather received her undergraduate degree from the George Washington University and her law degree from the University of Georgia. She practiced law for two years with the firm of Whelchel, Brown, Readdick and Bumgartner in Brunswick, Georgia, handling litigation cases for a broad range of clients. Heather remains a member of the State Bar of Georgia.

2) Length of employment with IFS:

Letitia has been with IFS since June of 2003, and Heather has been with the firm for a total of five years (one as an associate and four as a partner).

3) Specialization:

Both Letitia and Heather have extensive specialization and experience advocating on behalf of local governments, both during their time in public service and in the private sector. They are former House of Representatives staff who worked for senior Members of the Appropriations Committee. As you can see from the biographies attached to this proposal, Letitia served in the office of Congressman Jerry Lewis for many years while Heather worked for Congressman Jack Kingston. Being on the staff of a Member of Congress necessitates constant communication with the local governments in the district, providing a deep understanding of the issues that cities face in working with the federal government.

Letitia and Heather guided municipalities through the complicated appropriations process during their time on Capitol Hill. Also, both handled the complicated Transportation Reauthorization process during their years in government service, and they bring that expertise with them to benefit IFS clients. Working for Innovative Federal Strategies' existing municipal clients has kept Letitia and Heather deeply involved in municipal government advocacy. They routinely lead our clients through appropriations requests, submissions for the Transportation Reauthorization bill, submissions for the Water Resources and Development Act, and a wide variety of other government agency advocacy work.

4) Scholastic honors and professional affiliations:

Letitia received numerous academic honors when she was in school, and she currently serves on the Board of Directors of the Wright Patman Congressional Federal Credit Union where she is Chair of the Budget Committee.

Heather received a number of scholastic honors during her time in undergraduate and law school and is a member of the State Bar of Georgia.

5) Knowledge of and expertise with California State and Local issues:

IFS currently represents ten municipal entities in Southern California, including several municipalities, an airport and five water districts. In addition to that list of municipal clients, we also represent a number of private companies, health care providers and biotech firms located in the region. Because of that client base, and because several of our firm's partners consider Southern California to be like a second home, we are very knowledgeable about the issues facing the state and local governments. We read local newspapers and talk to our clients in California on a daily basis in order to remain current on local developments.

6) Years and statement of other types of clientele:

IFS has been in business for twenty years, and we pride ourselves on our long term relationships with many of our clients. IFS' current client list is as follows:

Aduro BioTech
Advanced Projects Research Inc. (APRI)
Austal USA
Battelle Memorial Institute
Cerus Corporation
City of Highland, California
City of Hope National Medical Center
City of Murrieta, California
City of Redlands, California
City of San Bernardino, California
Combat Displays, Inc.
Cree, Inc.
Day & Zimmermann

Dignity Health (formerly Catholic Healthcare West)
Environmental Systems Research Institute, Inc. (ESRI)
Fugro EarthData, Inc.
General Atomics
General Atomics Aeronautical Systems
General Dynamics
Heart of a Champion
Hewlett Packard
HP Enterprise Services
Hi-Desert Water District
Inland Empire Utilities Agency
Inland Valley Development Agency
Institute for Human and Machine Cognition, Inc. (IHMC)
MicroAssembly Technologies
Mojave Water Agency
Northrop Grumman Corporation
Raytheon
San Bernardino Valley Municipal Water District
Science Applications International Corporation
TrellisWare Technologies, Inc.
Trident Systems Incorporated
Trimble Navigation Limited
Triton Systems, Inc.
Veramark Technologies, Inc.
Vuzix Corporation
Yakabod

7) Describe how you would structure the working relationship with the City:

IFS believes that there are two imperative objectives when working with Cities. One objective is to become very familiar with City of Banning's needs and get to know the City's leadership. Doing so will enable us to work in a collaborative and proactive manner to provide the City with the best information, at the right time, in order to gain access to all possible federal funding sources. The other critical objective will be to help the City forge extremely positive relationships with Members of the House of Representatives, the Senate, Congressional staff and other relevant federal officials in order to raise the profile of the City in the most constructive way possible.

We would recommend beginning our representation with a face to face meeting to receive a detailed update regarding all the issues facing the City of Banning. We devote an extensive amount of time with clients to immerse ourselves in relevant issues and to understand our clients' perspectives. IFS will work closely with the City staff at the direction of the City Council to identify critical funding needs and help assign a priority to them taking into account the opportunities with the greatest chances of success.

Once we have clearly established priorities, IFS will use all the resources in the firm to identify the most appropriate federal funding opportunities. We will design a comprehensive strategy for the City's approval and provide detailed advice regarding the annual appropriations process, relevant authorizations and grant opportunities. With the City's needs and objectives in mind, we will analyze agency budgets and other opportunities to determine federal requirements that might be beneficial to the City. We will help develop compelling materials for Members of Congress and facilitate meetings with them and their staff. We will ensure that your requests are justified with effective written materials and the correct paperwork, and that your submissions meet the demanding and fluid Congressional deadlines. We will monitor Congressional hearings, testimony, Congressional press releases, and federal web sites and draft legislative proposals for emerging opportunities of interest to the City. IFS will monitor the City's requests throughout the process and provide City officials and staff with timely updates.

We will monitor the Federal Register, Grants.gov, FedBizOpps, and other sources for information regarding potential grant opportunities for the City and provide the information in real time to City officials. We consult with our clients during preparation of a grant application, draft letters of support for Congressional offices to review and potentially send in support of grant applications and design and implement follow-up strategies. The firm has successfully identified funding opportunities for clients in the Departments of Commerce, Interior, Transportation, Housing and Urban Development, Labor (ETA), Education, Health and Human Services, and Defense. We have expertise in accessing sources of funds for economic development. IFS would follow-up with Congressional and City staff on the outcome of grant applications. In addition, we will recommend strategy for preparing to understand the agencies requirements prior to the next grant cycle.

8) Describe systems/mechanisms that would be established to ensure timeliness of response to City staff:

As a matter of course, we provide weekly and monthly written reports on activities and developments on Capitol Hill and in the Administration. The first is the IFS Weekly Legislative Update, which will be e-mailed to City officials every Monday. It contains a summary of the latest hot topics at the federal level as well as all of the relevant federal grant postings for the City's review. Second, we provide a Monthly Legislative Report at the end of every month, highlighting important events on Capitol Hill and of interest to the City.

IFS also participates in scheduled or ad-hoc conference calls with City staff and is pleased to provide custom reports on activities, legislation and topics of interest. However, since the development of legislation can be a daily, if not hourly occurrence, we recommend utilizing conference calls to bring clients up-to-date on the latest developments. We have found this to be a very effective way of communicating ultra time-sensitive information.

We pride ourselves on our close working relationships with our clients, ensuring they have all of our phone numbers should any situation arise that needs immediate attention. We actively encourage clients to reach out to us whenever they have a question or concern. That enables us to get right to work on the issue before it gets too far down the road or, worse, out of control.

We strongly believe that open lines of communication are critical and the more we know about a client's issue, the better we are able to help.

Also, we will stand ready to respond to urgent requirements. In those rare instances where city strategy cannot stay in front of rapidly evolving or short notice events, IFS will be ready to respond using contacts cultivated in the federal government. Additionally, we will rapidly determine key strategic players surrounding the issue and create opportunities to inform them of the critically important issues from the City of Banning's perspective.

9) Define the standard time frames for response by staff to direction and or inquiry from the City Manager:

Letitia and/or Heather would respond to any direction or inquiries from the City Manager within the same business day.

10) Describe systems/mechanisms that would be established for monthly reporting of status of projects and requests:

As described above in the answer to Question 8, IFS will provide a written Monthly Legislative Report to the City that will provide an update on federal legislative issues. In addition to that written report, we suggest a scheduled monthly phone call to discuss pending issues and exchange information. We find that such calls are very helpful in keeping track of ongoing client projects and issues.

11) Describe the preferred method for transmittal of requests and other material from the City:

Email is the best way to reach Letitia and Heather – lwhite@innofed.com and hhennessey@innofed.com.

12) Describe in detail the efforts you will undertake to achieve client satisfaction and to satisfy the requirements of the Scope of Services:

If we are fortunate enough to be chosen as your federal representative, IFS will make every effort to ensure that the City of Banning is a satisfied client. We will tailor our representation to fit the City's needs and to maximize the City's positive impact at the federal level. All members of the firm engage in aggressive, hands-on advocacy on behalf of our clients. The firm owes a large part of its success to the fact that we maintain constant communication with relevant Members of Congress and their staff. We provide information without waiting to be asked. Because each principal and associate has significant Capitol Hill and Executive Branch experience, we are able to anticipate the needs of Members of Congress and their staff and provide compelling draft hearing questions, draft letters, draft statements and press releases when we are seeking their assistance. This proactive and well-constructed approach has led to positive results for our clients. We would utilize the same approach if retained by the City of Banning.

To speak specifically to the tasks listed in the Scope of Work, IFS is perfectly suited to perform those tasks on behalf of the City of Banning. Each is addressed individually below:

a. Monitoring – IFS performs all of the tasks listed in this section of the Scope of Services for our municipal clients on a regular basis and would do so for the City of Banning if we are chosen as the City's federal legislative advocate.
b. Bill tracking service – IFS will track all legislation, federal rulemaking and other materials that are relevant to the City of Banning and will provide them to City leadership on a regular basis.
c. Regular bill list – IFS will maintain and update the City's legislative priorities throughout the year.
d. Legislative advocacy – IFS will take every step identified in the Scope of Services as well as all others necessary to ensure that the City's legislative agenda is furthered at the federal level. Our firm has a great deal of expertise in municipal issues such as transportation, water reclamation, public safety issues and federal support for airports. We will monitor Congressional hearings, testimony, Congressional press releases, and federal web sites and draft legislative proposals for emerging opportunities of interest to the City. Our firm will prepare all necessary written materials regarding federal issues for use by City leadership. IFS has an excellent working relationship with the California delegation, including both Senate offices, as well as a close working relationship with most members of the major committees and the leadership in both the House and the Senate.
e. Coordination of legislative and regulatory efforts – IFS will coordinate the City of Banning's federal legislative and regulatory priorities and will draft any required legislation and regulations in all of the ways identified in the Scope of Services. When appropriate, IFS will facilitate relationships between clients and like-minded groups to create coalitions for advancing various causes. We interact frequently with groups such as the National Association of Counties (NACO), the League of Cities, and the Association of California Water Agencies (ACWA) through meetings, briefing sessions and participation in legislative campaigns when it benefits our clients. In the past, we have formed coalitions with other like-minded lobbying groups and associations to get the job done effectively.
f. Special projects facilitation – IFS will assist with all special projects as identified by the City.
g. Establish an active presence – IFS will work to ensure that the City of Banning has an active presence at the federal level. We believe strongly that local elected officials are a crucial element in this strategy and we facilitate their access to key decision makers regularly. We will help plan well timed visits for City officials to Washington. IFS will implement the strategy for educating Congressional and federal officials on key topics critical to the City of Banning. We will arrange meetings with key staff and Members and accompany City officials to these meetings. IFS would provide useful advice on inviting Members of Congress and their local district or Washington, D.C. staff, or professional staff of Congressional Committees to visit the City. We would then prepare City officials who are serving as hosts and draft all briefing material. Also, we would

closely monitor City events to identify opportunities to proactively send "good news" and success stories to key Members of Congress and their staff.

h. Federal budget issues – IFS has an especially strong expertise in federal budget issues, and the City of Banning would greatly benefit from that expertise. With the City's needs and objectives in mind, we will analyze agency budgets and other opportunities to determine federal requirements that might be beneficial to the City. We will help develop compelling requests to Members of Congress and facilitate meetings with them and their staff. We will also evaluate all possible avenues for furthering the City's goals in the Transportation Reauthorization bill and the Water Resources Development Act. We will ensure that your requests are justified with effective written materials and the correct paperwork, and that your submissions meet the demanding and fluid Congressional deadlines.

13) Explain your understanding of the current financial situation facing Banning:

IFS is very much aware that cities in California are struggling financially. The recent loss of redevelopment funding was especially difficult for most cities to absorb and removed a critical tool from the toolbox that was keeping cities afloat during the economic downturn. The redevelopment situation is only one of many such actions by the state which has left cities with reduced budgets. Changes in policies at the state level have reduced your ability to secure local revenues while also giving you new responsibilities.

Because we appreciate the challenges that cities face, IFS prides itself on offering very reasonable retainers to our municipal clients. We understand that you are responsible for providing a vast number of services to your residents, including public safety, wastewater collection and treatment, water supply and numerous other community services.

As stated in your RFP, federal grant are an increasingly important and highly competitive. We help cities and counties with the federal grant process by identifying grant opportunities. IFS regularly scrutinizes the Grants.gov, Federal Register and FedBizOps and federal agency websites for grants and speak regularly with federal agency staff to uncover other opportunities that would benefit our clients. We consult with our clients during preparation of a grant application, draft letters of support for Congressional offices to review and potentially send in support of grant applications and design and implement follow-up strategies. In addition, we help pursue demonstration projects. The firm has successfully identified funding opportunities for clients in the Departments of Commerce, Interior, Transportation, Housing and Urban Development, Labor (ETA), Education, Health and Human Services, and Defense. We have expertise in accessing sources of funds for economic development.

B) IFS understands that we will be required to meet the City's insurance requirements if we are selected to represent you. We are happy to do so in full compliance with your requirements and will provide all necessary documentation prior to commencing work for the City.

Current Practices/Conflicts of Interest

No IFS team member has made any political contributions to a City Council member of the City of Banning in the last three years.

Our list of current public clients is as follows:

- City of Highland, California
- City of Murrieta, California
- City of Redlands, California
- City of San Bernardino, California
- Hi-Desert Water District
- Inland Empire Utilities Agency
- Inland Valley Development Agency/San Bernardino International Airport Authority
- Mojave Water Agency
- San Bernardino Valley Municipal Water District

In the past five years, we have also represented the following public agencies:

- City of Loma Linda
- City of Victorville
- City of Yucaipa
- City of Twentynine Palms
- Lake Arrowhead Community Services District
- Town of Yucca Valley

To our knowledge, none of our current or former clients has a presence in the City of Banning.

IFS maintains a strict conflict of interest policy. We do not know of any current or potential future conflict of interest which would impact our ability to represent the City of Banning.

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References for Innovative Federal Strategies

1. City of San Bernardino
   Pat Morris
   Mayor
   (909) 384-5133
   Morris_pa@sbcity.org

2. City of Highland
   Joe Hughes
   City Manager
   (909) 864-8732 x221
   jhughes@cityofhighland.org

3. Mojave Water Agency
   Kirby Brill
   General Manager
   (760) 946-7000 x7008
   kbrill@mojavewater.org

Compensation and Reimbursement

IFS proposes a fixed monthly retainer of $3500 per month.

If the proposed retainer exceeds the City's available budget, IFS is willing to enter into negotiations with the City.

Biographies of IFS Team Members (other than Letitia White and Heather Hennessey which are provided above):

JEAN DENTON

Jean Denton is a Principal of Innovative Federal Strategies LLC who has twenty years of experience working in the legislative arena, with a particular expertise in dealing with the appropriations process. Her work with a diverse group of clients brings a well-rounded knowledge of issues, which is extremely helpful in understanding and impacting the legislative process.

Ms. Denton served as Senior Legislative Assistant to Congressman Bill Lowery and was responsible for issues related to his assignment to the House Appropriations Committee. This first-hand knowledge of how the Appropriations Committee operates provides a vital link to developing strategy for pursuing federal funding. In addition, her Capitol Hill responsibilities included the District of Columbia Committee on which Congressman Lowery was the Ranking Republican on the Judiciary and Education Subcommittee. During the past dozen years while serving the private sector, Ms. Denton has broadened this experience by working on behalf of various interests including defense firms, municipalities, transit interests and a large public university.

BILL LOWERY

Bill Lowery is a Principal of Innovative Federal Strategies LLC. His experience as an elected representative in both local and federal government provides him with valuable insight into the legislative and political process. By serving in the private sector and working on behalf of interests that vary from states to municipalities and large corporations to small businesses, he has kept his hand in the public policy arena. Mr. Lowery contributes an insider perspective that has proven invaluable to the firm's clients.

Mr. Lowery served for 12 years as a Member of Congress before retiring in 1993. While serving in the House, he was the Ranking Republican on the Appropriations Military Construction Subcommittee and also served on several other Appropriations Subcommittees including: Veterans-Housing and Urban Development-Independent Agencies; Interior; and Treasury-Postal Service-General Government. Early in his congressional career, Mr. Lowery was a member of the House Banking and Science Committees. He also served as Ranking Member of the Judiciary and Education Subcommittee for the House District of Columbia Committee.

His career as a public official began in 1977 with his election to the San Diego City Council, where he was involved in economic development and downtown revitalization. Mr. Lowery served as the city's representative on the Joint City of San Diego - San Diego Unified School District School Finance Task Force. He was serving as Deputy Mayor in 1980 when he was elected to the U.S. House of Representatives.

Mr. Lowery is a member of the California Western School of Law Board of Trustees. He is a member of the Board of Directors of the California Institute on Public Policy. He also was a board member of the San Diego based ORINCON Corporation, an advanced technology firm

acquired by Lockheed Martin Corporation, and a board member of DSR of Fairfax, Virginia, now a division of General Dynamics Corporation.

DAVE KILIAN

Dave Kilian is the Managing Director of Innovative Federal Strategies LLC. He has about twenty-nine years of service to the federal government in both the executive and legislative branches. This includes eight years as a civilian budget analyst for the U.S. Air Force in the Pentagon, one year as a supervisory budget analyst in the Department of the Treasury with the U.S. Customs Service, and twenty years as a Professional Staff Member of the House Appropriations Committee. On the hill, he worked 17 years for the Defense Subcommittee where he primarily handled weapon system acquisition, and research and development of advanced technologies, for each of the military services and defense agencies under both political parties. During the last three years of his federal career, Dave worked for the Democratic staff of the House Appropriations Committee under Congressman Dave Obey, as Minority Staff Director for Defense Appropriations under Congressman Jack Murtha and later as Minority Staff Director for Energy and Water Development Appropriations under Congressman Pete Visclosky. In the energy field, Dave worked with programs of the Departments of Energy and Interior, and the Army Corps of Engineers. During his career Dave held some of the highest security clearances in the federal government for programs in the Department of Defense, the Intelligence Community, and Department of Energy nuclear weapons.

Besides weapons system issues, Dave has considerable experience in information technology development. He was once named by Federal Computer Week in its "Federal 100" of the most influential individuals. He has also handled space programs, ballistic missile defense, intelligence programs, defense conversion, military construction, foreign military sales, and homeland security issues during his career. He is intimately familiar with the science programs in the Department of Energy and the programs of the national laboratories, as well as DOE's efforts to environmentally restore former nuclear weapons manufacturing facilities.

Dave has a Masters of Business Administration degree in Federal Procurement and Contracting, and a Bachelor of Science degree from the University of Notre Dame in mathematics.

JOHN LITTLE

John Little comes to Innovative Federal Strategies LLC having served with distinction as the Deputy and later Acting Director of the Secretary of the Navy's Congressional Budget Liaison Office under the Assistant Secretary of the Navy for Financial Management, Budget. He brings to *Innovative Federal Strategies LLC* extensive knowledge of the Pentagon, the DOD budget process and current worldwide joint operations. During his career he worked directly for and learned extensively from civilian financial executives in both Navy and DOD budget offices. His experience working with the Assistant Secretary of the Navy for Financial Management and the Budget provides the firm with unique and vital insight into the DOD acquisition and budget building processes.

John served most recently at the rank of Captain on the staff of Commander, Second Fleet, as Director of Fleet Operations. His successful 22-year career included four years composite time at the command and executive levels at sea. His broad experience base includes building a $1 billion warship from the keel up to command of a Destroyer on the front lines of the Global War on Terrorism. His most recent deployment was in command of the three ships Surface Strike Group 03-2 to the Mediterranean Sea, Red Sea, Gulf of Aden and Indian Ocean in support of Operations Iraqi Freedom and Enduring Freedom.

John Little has a Bachelors Degree in Political Science from Auburn University, a Masters of Science Degree in Education from Old Dominion University, and is a graduate of the Air Force Air Command and Staff College and the Armed Forces Joint Command and Staff College. John was competitively selected from a Navy-wide candidate list to teach for two years in the Seamanship and Navigation Department at the United States Naval Academy.

DREW TATUM

Drew Tatum comes to Innovative Federal Strategies, LLC after serving over a year as the Systems Administrator and Correspondence Coordinator for Alabama Senator Jeff Sessions. In Sessions' office, he was responsible for the budgeting, implementation, troubleshooting, and training of information technology systems within six different offices in Washington, D.C. and the State of Alabama. In addition to his work in IT, Tatum was responsible for managing and reporting on the incoming correspondence from Alabama constituents.

A native of Alabama, Drew received his Bachelor's Degree in Business Management with a concentration in Human Resource Management and minor in Leadership Studies from Troy University in 2011. In addition to graduating *summa cum laude*, Tatum received the Delta Sigma Pi Scholarship Key for the highest graduating GPA in the Sorrell College of Business. Before graduating, he spent three years working in administrative capacities for the university. Tatum also spent many hours in Montgomery, Alabama working at the state level with the Director of Governmental Relations for Troy University on issues related to higher education.

STACY FULLER

In January 2012, Innovative Federal Strategies LLC welcomed Stacy Fuller to the team. Stacy joined the Washington office of her home-district representative, U.S. Congressman Erik Paulsen of Minnesota shortly after Mr. Paulsen was elected. She served on the Congressman's staff for three years, assisting with his schedule, and office management. Prior to working for Minnesota in Washington, D.C., Stacy worked in Minnesota for U.S. Senator Norm Coleman. Her experience in the 2008, hotly contested and highly scrutinized Senate race, recount and contest, provided Stacy with a working knowledge of a state-wide campaign, and robust first-hand knowledge of Minnesota election law and procedures.

Stacy graduated from the U.S. Naval War College in June, 2012 with her M.A. in National Security and Strategic Studies, with an area focus in Irregular Warfare. Stacy earned her Bachelor of Science in Economics from James Madison University, and served two years as the student member of the University Board of Visitors. Graduating as an honors scholar, her senior

thesis was titled, "Evolution, Complexity and General Equilibrium: A Historical Perspective." This study laid the groundwork for later evaluating terrorist organizations and warfare through the framework of the complex systems approach.

EXHIBIT "B"

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BANNING AND INNOVATIVE FEDERAL STRATEGIES, LLC

CITY OF BANNING
CONTRACT SERVICES AGREEMENT FOR
FEDERAL LEGISLATIVE ADVOCACY (LOBBYING) SERVICES

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement") is made and entered into this _____ day of _____, 2013, by and between the CITY OF BANNING, a California municipal corporation herein ("City") and INNOVATIVE FEDERAL STRATEGIES, LLC (herein "Contractor").

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Contractor shall perform the work or services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by reference. Contractor warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Warranty. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence. Contractor warrants all work under the Agreement to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or nonconformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at his sole cost and expense. The 1-year warranty may be waived in Exhibit "A" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "B" and incorporated herein by this reference, but not exceeding the maximum contracted monthly retainer amount of $3,500; $42,000 annually ("Contract Sum").

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

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

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Additionally, any travel and other extraordinary expenses shall be approved in writing by the Contract Officer.

2.4 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall determine the applicable prevailing rates and make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The provisions of this Section may be waived in Exhibit "A" if inapplicable to the serves provided hereunder.

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3. PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "C" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance. City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forty five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.

3.5 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding sixty (60) days from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "C").

4. COORDINATION OF WORK

4.1 Representative of Contractor. Letitia White or Heather McNatt Hennessey are hereby designated as being the representative of Contractor authorized to act on its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Contractor and any authorized agents shall be under the exclusive direction of the representative of Contractor. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, and shall keep City informed of any changes.

4.2 Contract Officer. Andrew J. Takata, City Manager, is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer"). The Chief Administrative Officer of the City shall have the right to designate another Contract Officer by providing written notice to Contractor.

4.3 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth. Contractor shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than $1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any

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worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of $100,000 per person and $300,000 per occurrence and property damage liability limits of $150,000 per occurrence or (ii) combined single limit liability of $1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City Manager or other designee of the City due to unique circumstances.

5.2 Indemnification. To the full extent provided by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of Contractor, its officers, agents, employees, subcontractors, or invitees, provided for herein ("indemnitors"), or arising from Contractor's indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the negligence or willful misconduct of the City indemnitees.

5.3 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party

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hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside County, State of California.

7.2 Disputes; Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this

Agreement. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

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

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

8. MISCELLANEOUS

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

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

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the Chief Administrative Officer and to the attention of the Contract Officer, at City of Banning City Hall, 6330 Pine Avenue, Banning, California 90201 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement.

8.4 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

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

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment.

8.8 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

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

CITY:

CITY OF BANNING

_____
Andrew J. Takata, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM
AND LEGAL CONSENT

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

CONTRACTOR:

_____
By:_____
Name:
Title:

By:_____
Name:
Title:

Address:_____
_____
_____

Two signatures are required if a corporation

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

[END OF SIGNATURES]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2013 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER_____

_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2013 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

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EXHIBIT "A"
SCOPE OF SERVICES

Professional services will include, but are not limited to, the following:

Monitoring – Consultant shall serve as a reliable and consistent conduit of information to and from the congressional delegation, other members of Congress, congressional committees, congressional staff, and federal agencies; monitor and provide regular reports, both orally and in writing, on current legislation, the federal budget process, or any congressional events that may directly or indirectly impact the City. Firm should work closely with the city council or city manager to assist in developing the City's legislative priorities and identifying current needs. Frequent contact should be made with Members of Congress and staff, as well as Committee and federal agency staff on matters concerning the development of future legislation and regulations impacting the City of Banning. Said contact shall keep policy makers aware of the potential effect of specific legislation and regulations relative to the City of Banning's interests.

Bill Tracking Service - Firm should obtain and monitor all bills, resolutions, files, journals, histories, etc. As such, copies of all bills and amendments that are determined to have an impact on the legislative and regulatory interests of the agency should be forwarded to the City of Banning.

Regular Bill List – Once legislative positions are established by the City, required actions should be logged into the Consultant's computer bill tracking system and updated on a regular basis.

Legislative Advocacy - The City of Banning's position on key House and Senate action shall be transmitted to Members of Congress and staff, as well as Committee and federal agencies (as appropriate) and other interest groups. This should be accomplished through personal discussions with congressional delegation, committee consultants and agency representatives, direct lobbying of legislators, meeting with federal agencies and other interest groups represented at the Congressional level, testifying at appropriate congressional policy and fiscal committees and agency hearings, orchestrating statements of legislators before the House/Senate, prepare and send letters notifying appropriate officials and agencies of the City of Banning's position and drafting announcements. Design and implement a strategy, in consultation with City of Banning staff that raises the consciousness and awareness of issues relating to the City of Banning with congressional leaders and broadens and improves direct communication of City officials with the House and Senate Leadership.

Coordination of Legislative/Regulatory Efforts - Contractor will work with the City of Banning in the coordination of a legislative/regulatory program, which includes the development of legislative/regulatory positions and platforms as well as drafting proposed legislation when appropriate. The firm should strive to coordinate the City's perspective with other associates as appropriate. Design and implement a strategy, in consultation with City of Banning staff that raises the consciousness and awareness of issues relating to the City of Banning with congressional leaders and broadens and improves direct communication of City officials with the House and Senate leadership.

EXHIBIT "A"
SCOPE OF SERVICES – Continued

Special Projects Facilitation - Contractor should be a special project facilitator for the City of Banning before federal agencies on funding matters and to develop project guidelines, policy and resolution statements. Assist the City of Banning with strategic communication or crisis response, if needed, relative to the City's federal affairs activities.

Establish an Active Presence - Contractor should actively establish a strong identity and presence in Washington, DC on behalf of the City of Banning. This effort should be reinforced by day-to-day involvement in the political, regulatory and congressional actions on behalf of this organization. Additionally, on-site visits to the City of Banning shall be made upon reasonable notice and request to Consultant along with a presentation to the City Council and to confer with City officials regarding federal issues as requested.

Federal Budget Issues - Focus efforts of supporting the City's appropriations requests and legislative objectives during the final phases of Congressional action on spending and authorization legislation, including coordinating additional meetings with relevant Members of Congress or staff in support of the City's federal objectives (as appropriate).

EXHIBIT "B"

SCHEDULE OF COMPENSATION

I. Contractor shall perform the following tasks:

Please refer to the Scope of Services

VI. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the Services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. The total compensation for the Services per monthly retainer shall not exceed $3,500; $42,000 annually, as provided in Section 2.1 of this Agreement. It is understood that the City will be billed additional amounts for approved reimbursable expenses.

VI. The Contractor's monthly retainer of $3,500; $42,000 annually encompasses payment for all tasks outlined in the scope of services.

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EXHIBIT "C"
SCHEDULE OF PERFORMANCE

Monthly reports to be provided along with ongoing notifications and updates regarding legislation which may affect the City of Banning.

Presentations to the City Council as requested and negotiated.

And any and all other tasks as negotiated between the City of Banning and Innovative Federal Strategies, LLC.

CITY COUNCIL/BANNING UTILITY AUTHORITY
AGENDA

DATE: **April 9, 2013**

TO: **Banning Utility Authority**

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

SUBJECT: **Resolution No. 2013-08UA, "Approving an Agreement with Merlin Johnson Construction, Inc. for the Replacement of Two Pumps at the City of Banning's Wastewater Treatment Plant and Approving the Purchase of the Pumps and Materials"**

RECOMMENDATION: Adopt Resolution No. 2013-08UA:

I. Approving the Agreement with Merlin Johnson Construction, Inc. of Mentone, California in the amount not-to-exceed $40,160.00 for the replacement of two pumps at the City of Banning's Wastewater Treatment Plant.

II. Approving the purchase of two pumps and necessary parts from Flo-Systems, Inc. in the amount of $32,869.00.

III. Authorizing the Administrative Services Director to make necessary adjustments and appropriations in an amount of $73,029.80 from the Wastewater Capital Fund to Account No. 680-8000-454.95-12 (WWTP Improvements).

JUSTIFICATION: The primary sludge pumps, which are over 30 years old, play an integral part in the circulation of raw sludge from the primary clarifiers to the primary digesters. It is necessary to replace both pumps because they are now obsolete and inefficient to operate.

BACKGROUND: The City of Banning's Wastewater Treatment Plant was designed and built nearly 60 years ago and many of the original components are still in service. The primary sludge pumps, which are older style plunger type pumps, have been in operation for over 30 years. The required maintenance and difficulty to repair both plunger style pumps has increased over time and constantly failing which is causing stress on the circulation system. The pumps are considered to be old technology, which has made it very difficult to obtain replacement parts during repairs. Staff has discussed the available options with United Water, the City's consultant responsible for the maintenance and operation of the Wastewater Treatment Plant, and has concluded that the best option is to immediately replace the existing pumps.

Due to the nature of the work to replace both pumps, staff has consulted with Merlin Johnson Construction, Inc. ("MJC") to perform a design-build project. MJC, a reputable pipeline contractor has completed many projects for the City. Once staff defined the scope of work, MJC provided a proposal, attached as Exhibit "A", in the amount of $40,160.00 for the cost

$40,160.00 for the cost of the labor to replace the primary sludge pumps. Staff has also obtained a quote from Flo-Systems, Inc. for the pumps and other necessary parts in the amount of $32,869.80, attached as Exhibit "B". The total cost of the project is $73,029.80.

The work will be authorized consistent with City Policy as set forth in Ordinance No. 1266, Section 18A-8.5 for emergency facilities repair.

FISCAL DATA: An appropriation in the amount of $73,029.80, from the Wastewater Capital Facility Fund, to Account No. 680-8000-454.95-12 (WWTP Improvements) is necessary in order to fund the improvements.

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. 2013-08UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA APPROVING AN AGREEMENT WITH MERLIN JOHNSON CONSTRUCTION, INC. FOR THE REPLACEMENT OF TWO PUMPS AT THE CITY OF BANNING'S WASTEWATER TREATMENT PLANT AND APPROVING THE PURCHASE OF THE PUMPS AND MATERIALS

WHEREAS, the City of Banning owns and operates its own Wastewater Treatment Plant; and

WHEREAS, the City of Banning's Wastewater Treatment Plant was designed and built nearly 60 years ago and many of the original components are still in service; and

WHEREAS, the primary sludge pumps, which are over 30 years old, play an integral part in the circulation of raw sludge from the primary clarifiers to the primary digesters and are now difficult and inefficient to operate and are currently causing stress in the sludge circulation system; and

WHEREAS, staff has discussed the available options with United Water, the City's consultant responsible for the maintenance and operation of the Wastewater Treatment Plant, and has concluded that the best option is to replace the existing pumps as soon as possible; and

WHEREAS, due to the nature of the work to replace both pumps, staff has consulted with Merlin Johnson Construction, Inc. ("MJC") to perform a specialty design-build project; and

WHEREAS, after staff defined the scope of work, MJC provided a proposal in the amount of $40,160.00 for the cost of the labor to replace the primary sludge pumps; and

WHEREAS, staff has obtained a quote from Flo-Systems, Inc. in the amount of $32,869.80 for the pumps and other necessary parts required for the completion of the pump replacement project.

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

SECTION 1. The Banning Utility Authority of the City of Banning Adopts Resolution No. 2013-08UA, entering into an agreement with the Merlin Johnson Construction Inc. of Mentone, California in the amount not-to-exceed $40,160.00 for the replacement of two pumps at the City of Banning's Wastewater Treatment Plant.

SECTION 2. Approving the purchase of two pumps and necessary parts from Flo-Systems, Inc. in the amount of $32,869.00.

SECTION 3. Authorizing the Administrative Services Director to make necessary adjustments and appropriations in an amount of $73,029.80 from the Wastewater Capital Fund to Account No. 680-8000-454.95-12 (Plant Improvements).

PASSED, APPROVED, AND ADOPTED this 9th day of April, 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 Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-08UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at its joint meeting thereof held on the 9th day of April, 2013, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

EXHIBIT "A"

Merlin Johnson
PIPELINE CONTRACTORS
Construction, Inc.

License # 467306
P.O. Box 777 • Mentone, CA 92359
(909) 794-7702 • Fax (909) 794-3653

March 08, 2013

Perry Gerdes
City of Banning
P.O. Box 998
Banning, California 92220

Re: Pump Replacement at Treatment Plant

Perry

Per your request I have worked up the costs for the installation of the City furnished pumps, valves, and check valves at the Sewer Plant.

The costs are broke down into two phases which include all of the work in each half of the pump room. One of the existing or new pumps will be in operation at all times during construction. The City will furnish the new pumps, plug valves, and check valves to the treatment plant for installation by MJCI. All electrical connections, modifications and start-up will be by others.

PHASE I (westerly pump)

1. Remove existing westerly pump, demo concrete pump pad and westerly half of floor, install new pump, mount to floor, modify existing piping as needed, install new valves, and piping from inlet manifold, and connect new pump to existing or modified piping.
   LUMP SUM $11,780.00

2. Grade and pour concrete floor (minimum 1% fall to drain) and finish.
   LUMP SUM $3,500.00

3. Furnish all inlet and outlet piping, fittings and appurtenances to modify existing piping to accommodate new pump. (material only)
   LUMP SUM $4,800.00

TOTAL PHASE ONE $20,080.00

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PHASE TWO (easterly pump)

4. Remove existing easterly pump, demo concrete pump pad and easterly half of floor, install new pump, mount to floor, modify existing piping as needed, install new valves, and piping from inlet manifold, and connect new pump to existing or modified piping.

   LUMP SUM $11,780.00

5. Grade and pour concrete floor (minimum 1% fall to drain) and finish.

   LUMP SUM $3,500.00

6. Furnish all inlet and outlet piping, fittings and appurtenances to modify existing piping to accommodate new pump. (material only)

   LUMP SUM $4,800.00

TOTAL PHASE ONE $20,080.00

TOTAL COST PHASE ONE AND TWO $40,160.00

If you have any questions or need any additional information please give me a call.

Sincerely

Merlin Johnson
President

EXHIBIT "B"

FLO-SYSTEMS, INC.
3010 Floyd Street, Burbank, CA 91504 *Phone (818) 562-5282*Fax (818) 842-3217*E-mail - flo-systems@flo-systems.net

March 20, 2013
Proposal: Banning Primary Sludge Pumps

To: Perry Gerdes sent via "e-mail"
City of Banning

RE: Progressive Cavity Pumps, 75 gpm @ 50 ft tdh @ 2% solids

Dear Perry:

Flo-Systems is pleased to propose to you the supply of the following equipment:

Two(2)Base mounted Moyno Model 2WB036 CDQ 3PA1AAAC, 6" flanged discharge x 4" flanged suction, Single Mechanical Seal with 6.75 :1 ratio Nord Gear Motor, 259 rpm, 7.5 hp, 230/460 volts, 3 ph, 60 hz, TEFC, High Efficiency, 1.0 SF, 40 deg C ambient rating .

Two(2) Princo Fluid Detection Monitor, consisting of L3515 Controller in Nema 7 XP aluminum housing with sensor flange 150# ASTM carbon steel wetted surfaces of epoxide resin and 316SS.

One(1) seismic calculation.

Total price for above items:	$ 30,435.00
8% Tax:	$ 2,434.80
Total Purchase Price	$ 32,869.80

Submittal: 4-6 weeks from receipt of PO
Estimated Shipment: 10-11 weeks from receipt of approved submittal.

Important Notes:
- Seal water flush

INCLUDED:

1. Freight to the jobsite. (FOB factory - freight allowed to the first destination).
2. **Start-Up Service, Training & Field Tests** - We provide the services of one Flo-Systems' technician for a maximum of 1 day. Water, materials, special instruments, etc., by others. Field tests are limited to our providing guidance and presence while the field tests are performed by others. Training is limited to guidance in utilizing the manufacturers operations and maintenance manuals. Additional service is available for an additional cost.
3. Shop drawings and maintenance manuals.

NOT INCLUDED:

1. Spare parts.
2. Vibration tests, vibration analysis or vibration testing equipment.
3. Anchor bolts & jacking screws.
4. Gauges & Warning signs.
5. Water seal piping and accessories.
6. Lubricants, oils & greases.

7. Any accessories or services not specifically mentioned in our proposal.
8. Field sound pressure level testing, hiring of acoustical consultants.

T078HIS PROPOSAL EXPIRES IN 30 DAYS from the date of this proposal.

This proposal reflects prices based solely upon Flo-Systems' Terms and Conditions attached. This proposal does not include the potential additional costs for bonding, accepting contractor's terms and conditions, retentions, etc.

(x) Our warranty is extended to one year after start-up service is performed on our equipment or 18 months after shipment, whichever occurs sooner.

This quotation is subject to Flo-Systems' standard Terms and Conditions, which appear on the next page. Any order or contract resulting from this quotation shall be governed by said terms. In addition: (1) buyer grants to seller a security interest in the equipment listed until contract is completed and full payment is made, (2) in the event that it becomes necessary to enforce payment terms, the prevailing party shall be entitled to reasonable attorney fees and related costs, (3) interest on past due accounts will be charged at the maximum legal rate not to exceed 1-1/2 percent per month. Such interest will be compounded monthly beginning on the first day that any such amount is past.

Thank you for the opportunity to submit this proposal.

Very truly yours,
Flo-Systems, Inc.

Elmo Dagondon
Elmo Dagondon

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TERMS OF SALE

1. **ACCEPTANCE.** These terms govern the purchase and sale of equipment, contractors services, etc, referred to in SELLER'S proposal or acknowledgement. Acceptance by SELLER, such offer or acceptance is conditioned on BUYER'S assent to these terms. SELLER rejects all additional or different terms in any of BUYER'S forms or documents unless specifically accepted by SELLER in writing. Where our Principal (manufacturer) reserves the right to accept the purchase order and invoice BUYER directly, our principals' terms and conditions shall apply if same is included with the proposal.
2. **PAYMENT.** Terms are Net 30 days from date of shipment and invoice, subject to approval of credit. SELLER may ship on a "when ready" basis and partial invoice for the equipment that has shipped. Partial invoices are bound by the same terms as those invoices submitted upon complete shipment of equipment. Interest at one percent per month or at the legal maximum rate will be assessed for late payment.
3. **RETENTIONS** not previously approved in writing by SELLER are not permitted.
4. **BACK CHARGES** accepted only upon written approval by SELLER.
5. **DELIVERY.** SELLER shall not be liable for delays in delivery due to fire, flood, labor issues, war, civil disorders, delay in transportation, inability to obtain materials, accidents, acts of God or other causes beyond SELLER'S reasonable control. If shipment is delayed due to BUYER or by government action, payment becomes due when the factory is ready to make shipment and storage charges, if any, become the BUYERS responsibility.
6. **RESPONSIBILITY.** SELLER shall not be responsible for damage to equipment if misused, improperly stored, installed or maintained. SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, COLLATERAL, LIQUIDATED OR OTHER INDIRECT DAMAGES. CONSEQUENTIAL DAMAGES FOR THE PURPOSE OF THIS AGREEMENT SHALL INCLUDE BUT NOT BE LIMITED TO, LOSS OF USE, INCOME, PROFIT, LOSS OF OR DAMAGE TO PROPERTY, ETC. These limitations apply whether the liability is based upon contract, tort, strict liability or any other theory.
7. **WARRANTY.** For benefit of the original user, SELLER warrants all new equipment sold to be free from defects in material and workmanship, and will replace or repair, F.O.B. at its factories or other location designated by it, any part or parts returned to it which SELLERS examination shall show to have failed under normal use and service by the original user within one year following initial shipment to the BUYER. This warranty does not cover damage by decomposition from chemical action or wear caused by abrasive materials nor does it cover damage resulting from misuse, alteration, accident or neglect, or from improper operation, maintenance, installation, modification or adjustment. Such repair or replacement shall be free for all items except for those items that are consumable and normally replaced during maintenance. THIS WARRANTY IS EXPRESSLY MADE BY SELLER AND ACCEPTED BY BUYER IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED. Warranty does not cover removal and installation of equipment.
8. **TAXES.** Prices are exclusive of all taxes, federal, state local of any kind or nature.
9. **TRANSPORTATION.** Unless otherwise set forth herein, prices are F.O.B. our factories. The consignee must report all claims for damages in transit to the carrier.
10. **COMPLIANCE WITH LAWS.** BUYER shall be solely responsible for securing any necessary permits and for compliance with all safety, health, sanitation and any other laws, ordinances and regulations in connection with the design, installation and operation of the equipment.
11. **INDEMNIFICATION.** It is understood that SELLER has relied upon data furnished by and on behalf of BUYER with respect to the safety aspects and application of the equipment and that it is BUYER'S responsibility to assure that the equipment will, when installed and put in use, be in compliance with requirements fixed by law and otherwise legally adequate to safeguard against injuries or damage to persons or property. BUYER hereby agrees to defend, indemnify and hold harmless SELLER, its agents and employees against any and all losses, costs, damages, claims, liabilities or expenses, arising out of or resulting from any injury or damage to any person or property caused by the inadequacy of safety features, devices or characteristics in the equipment or in the installation, use or operation of the same, except claims for repair or replacement of defective parts are provided in Paragraph 7 hereof. SELLER will indemnify, defend and hold BUYER harmless from any claim, cause of action or liability incurred by BUYER as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by SELLER'S sole negligence. SELLER shall have the sole authority to direct the defense of and settle any indemnified claim. SELLER'S indemnification is conditioned on BUYER (a) promptly notifying SELLER of any claim, and (b) providing reasonable cooperation in the defense of any claim. SELLER'S liability is limited to the coverage offered and paid by the SELLERS insurance policies.
12. **TITLE & LIEN RIGHTS.** After delivery to Buyer, Seller will have all such rights, including security interests and liens, in the equipment as lawfully may be conferred upon Seller by contract under any applicable provision of law.
13. **MISCELLANEOUS.** Goods may not be returned without previous written permission and are subject to a restocking charge. The SELLER may cancel agreement only upon written notice and payment of reasonable cancellation charges, including anticipated profit. Attorney's fees and court costs necessary to enforce these terms of sale will be paid to the prevailing party. No part of the Agreement may be changed or cancelled except by a written document signed by SELLER and BUYER. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable and all other terms shall remain in full force and effect. BUYER may not assign or permit any other transfer of the Agreement without SELLER'S prior written consent. The Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

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CITY COUNCIL/BANNING UTILITY AUTHORITY
AGENDA

Date: **April 9, 2013**

TO: **Banning Utility Authority**

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

SUBJECT: **Resolution No. 2013-10UA, "Approving a Contract Services Agreement with Layne Christensen Company of Fontana, California, for the Repairs to Water Well No. M-3"**

RECOMMENDATION: Adopt Resolution No. 2013-10UA:

I. Approving the Contract Services Agreement with Layne Christensen Company of Fontana, California, for the Repairs to Water Well No. M-3 in the amount of "Not to Exceed" $96,084.52.

II. Authorizing the Administrative Services Director to make the necessary budget adjustments and appropriations in an amount of $96,084.52 from the Water Operations Fund to Account No. 660-6300-471.95-08 (Wells/Pumping Equipment).

JUSTIFICATION: Staff recently learned that Well No. M-3 is operating at an unacceptable efficiency rate and therefore repairs must be made in order to ensure uninterrupted water supplies to the City's utility customers.

BACKGROUND: Banning Water Well No. M-3 is located on the north side of Wilson Street just west of Omar Street and is one of the highest producing water wells in operation. In 1994 the City acquired the assets of the Mountain Water Company including Water Well No. M-3. The well was originally drilled in 1965 which included the installation of a 16 inch diameter casing down to a depth of approximately 1,000 feet. At the time the design production rate of the well was 1,800 gallons per minute ("GPM"). In 2004, the City determined that the well casing was in a deteriorated state and it was therefore rehabilitated by the installation of an inner casing which resulted in a reduction in the casing diameter from 16 inches to 12 inches and a reduction in the production rate from 1,800 GPM to 800 GPM.

Recently staff recorded a 200 GPM production loss at Well No. M-3. City staff, along with Layne Christensen Company further investigated the well and determined that the bowls, motor bearings and windings were worn out causing the drop in water production. Additionally, a video of the well casing was performed and it was found that the screen that allows the water into the well is partially plugged.

Staff recommends the award of a contract services agreement to Layne Christensen Company, see proposal attached as Exhibit "A". The scope of work will include brush and bail,

installation of a new stainless steel cone strainer, installation of new shaft sections and couplings, installation of new bowls, installation of new head shaft and replacing the existing 350 horsepower ("HP") standard efficient motor with a 200HP premium efficient motor. The 350HP motor is the original motor size for the initial 1,800 GPM design production rate. As previously mentioned, due to the reduction in the casing size the production rate was reduced by more than half. It has been determined that a 200HP premium efficient motor can provide 800 GPM and can also reduce the electrical consumption by approximately 16%.

If approved, the project is anticipated to be completed prior to the expected increase in water demand during the month of May.

FISCAL DATA: An appropriation in the amount of $96,084.52, from the Water Operations Fund to Account No. 660-6300-471.95-08 (Wells/Pumping Equipment) is necessary in order to fund the repairs.

It is estimated that the 16% reduction in the electrical consumption can possibly equate to a savings of approximately $15,000.00 per year.

REVIEWED 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. 2013-10UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA APPROVING THE CONTRACT SERVICES AGREEMENT WITH LAYNE CHRISTENSEN COMPANY FOR THE REPAIRS TO WATER WELL NO. M-3

WHEREAS, the City of Banning owns and operates its own water wells throughout the City; and

WHEREAS, Banning Water Well No. M-3 is located on the north side of Wilson Street just west of Omar Street and is one of the highest producing water wells in operation and a 200 gallon per minute production loss was recently recorded; and

WHEREAS, city staff, along with Layne Christensen Company further investigated the well and determined that the bowls, motor bearings and windings were worn out causing the drop in water production; and

WHEREAS, staff recommends the award of a contract services agreement to Layne Christensen Company, see proposal attached as Exhibit "A"; and

WHEREAS, the scope of work will include brush and bail, installation of a new stainless steel cone strainer, installation of new shaft sections and couplings, installation of new bowls, installation of new head shaft and replacing the existing 350 horsepower ("HP") standard efficient motor with a 200HP premium efficient motor.

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

SECTION 1. The Banning Utility Authority of the City of Banning Adopts Resolution No. 2013-10UA, authorizing the agreement with Layne Christensen Company of Fontana, California in the amount "Not-to-Exceed" $96,084.52.

SECTION 2. Authorizing the Administrative Services Director to make necessary adjustments and appropriations in an amount of $96,084.52 from the Water Operations Fund to Account No. 660-6300-471.95-08 (Wells/Pumping Equipment)

PASSED, APPROVED, AND ADOPTED this 9th day of April, 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 Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-10UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at its joint meeting thereof held on the 9th day of April, 2013, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

///

EXHIBIT "A"

Layne Christensen Company
Proposal

EXIBIT "A"

WATER · MINERAL · ENERGY

4/1/2013

Quote: DS3282013

Mr. Perry Gerdes
City of Banning
176 E. Lincoln Street
Banning, CA 92220-0998

Re: M3 Repair & Install - Brush & Bail Swab with Oxymate, Repair and Install

Dear Perry,

We are pleased to present our project estimate for the referenced work to be performed at M3 Well.

Swab well using chlorine and oxymate. Brush and bail. Re-video log the well. Install new pumping equipment shown below, to meet conditions of 800 GPM @ 711' of TDH. Conduct deviation survey to check for dog legs in the well. Re-configure motor control panel to accommodate 200 HP motor. Perform make up and start up.

Our estimate is valid for 30 days and is subject to the attached Terms and Conditions. Applicable taxes, bonds, and special insurance requirements are not included with this estimate. Please contact your Layne Christensen Company representative if you have any questions.

Layne Christensen Company has been the industry leader in groundwater development since 1882. Our full range of water-related service encompasses: initial site selection; well field design and development; well drilling and development; pump installation and repair; water treatment; aquifer investigation and remediation; and well rehabilitation.

Thank you for choosing Layne Christensen Company and giving us the opportunity to be your water resource solution provider.

Sincerely,
Layne Christensen Company

Dennis Skinner
Account Manager
(909) 322-3765

4/1/2013 Quote: DS3282013

M3 Repair & Install

Swab w/ Oxymate & Chlorine			**Lump Sum**	$12,433.48
Brush & Bail			**Lump Sum**	$8,488.92

New Materials	Qty	Units	Unit Price	Ext Price
8" x 6" Suction NPT TOE w/ Stainless Steel Cone Strai	1	Ea	$818.18	$818.18
11CMC 12 Stage O/L (2 Stages Ductile Iron) 6-8 Week:	1	Ea	$15,152.73	$15,152.73
8" x 20' .277 Wall TNC	3	Ea	$754.55	$2,263.65
3" x 1.9375" x 20' Tube & Shaft Assembly (Goulds)	2	Ea	$1,145.45	$2,290.90
Line shaft Couplings 304 Stainless Steel	24	Ea	$63.64	$1,527.36
Rubber Centralizers	10	Ea	$21.82	$218.20
.25" Stainless Steel Poly Coated Airline	1	LS	$1,636.36	$1,636.36
New Head Shaft 416 Stainles Steel	1	Ea	$1,636.36	$1,636.36
US Motors 200 HP Premium Efficient 175% Thrust	1	Ea	$20,640.00	$20,640.00
			Sub-Total	$46,183.74

Chemicals	Qty	Units	Unit Price	Ext Price
Chlorine	15	Gal	$4.55	$68.25
Oxymate	5	Gal	$100.00	$500.00
Freight Chemicals	1	LS	$370.37	$370.37
			Sub-Total	$938.62

Install			**Lump Sum**	$10,508.92
Start Up			**Lump Sum**	$2,083.21
Shop Labor			**Lump Sum**	$887.01
Deviation Survey			**Lump Sum**	$3,481.48

Reconfigure Panel	Qty	Units	Unit Price	Ext Price
Labor				$2,663.08
Materials to Reconfigure Panel to 200 HP	1	LS	$2,818.18	$2,818.18
			Sub-Total	$5,481.26

WATER · MINERAL · ENERGY

4/1/2013
M3 Repair & Install

Quote: DS3282013

Motor Repairs Option	Qty	Units	Unit Price	Ext Price
Motor Repair Materials	0	LS	$11,363.64	$0.00
Motor Repair Labor	0	Ea	$7,407.41	$0.00
			Sub-Total	$0.00
Video Well			**Lump Sum**	$735.37
			Sub-Total	$91,221.84
			Tax	$3,965.60
			Consumables	$897.08
			Estimated Price	$96,084.52

Our estimate is valid for 30 days and is subject to the attached Terms and Conditions. Our terms and conditions are hereby incorporated by reference and constitute a part of this estimate. Please contact your Layne representative if you have any questions.

WATER RESOURCES

11001 Etiwanda Avenue, Fontana, CA 92337 | Office: 909-390-2833 | Fax: 909-390-6097 | layne.com

CITY COUNCIL/BANNING UTILITY AUTHORITY AGENDA

DATE: **April 9, 2013**

TO: **Banning Utility Authority**

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

SUBJECT: **Resolution No. 2013-09 UA, "Approving Additional Funding for the Professional Services Agreement for the Whitewater Flume Restoration Project with Roy McDonald, Environmental and Regulatory Consultant"**

RECOMMENDATION: The Banning Utility Authority adopt Resolution No. 2013-09 UA:

I. Approving additional funding for a Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant in an amount of $23,600.00 for additional professional services related to the Whitewater Flume Restoration Project for a total contract amount "Not to Exceed" $79,600.00, attached hereto as Exhibit "A."

II. Authorizing the Administrative Services Director to make necessary adjustments and appropriations in an amount of $23,600.00 from the Water Capital Facility Fund to Account No. 661-6300-471.33-11 (Professional Services).

JUSTIFICATION: It is necessary to modify the scope of services with Roy McDonald, Environmental and Regulatory Consultant to assist the City with implementing a Federal Energy Regulatory Commission (FERC) power license. Consequently, replacing the United States Forest Service Special Use Permit application.

BACKGROUND: On January 8, 2013 the Banning Utility Authority adopted Resolution No. 2013-01 UA, approving "Awarding a Professional Services Agreement for the Whitewater Flume Restoration Project for a total contract in the amount of $56,000.00 to cover a list of tasks and services including assisting the City with a United States Forest Service permit for Fiscal Year 2013.

The Forest Service letter dated January 15, 2013 (attached as Exhibit "B") the proposal submitted by the City was not consistent with the Land Management Plan. It has now been determined it is necessary to go forward with the FERC license. Therefore, additional services are necessary. Modifications to the Agreement include assisting the City with the application process of the FERC power license. The scope of work for the additional services includes, but is not limited to, the following: prepare the Draft Application for the License, circulate the Draft Application for the License, consult with key Agencies, prepare the Final Application for License, respond to Post-Filing Review Comments, respond to FERC Deficiency Notices and respond to FERC additional information requests.

McDonald, Environmental and Regulatory Consulting Services, for a total contract amount of $79,600.00. These services are expected to cover Fiscal Year 2013. Once completed, the project will be re-evaluated to determine if additional services are necessary. If required, staff will bring additional items to the City Council for review and approval.

FISCAL DATA: An appropriation in the amount of $23,600.00 from the Water Capital Facility Fund to Account No. 661-6300-471.33-11 (Professional Services) is necessary in order to fund the additional scope of services for the Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant. The total contract is for an amount "Not to Exceed" $79,600.00 unless otherwise approved by City Council.

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. 2013-09 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING ADDITIONAL FUNDING FOR THE PROFESSIONAL SERVICES AGREEMENT FOR THE WHITEWATER FLUME RESTORATION PROJECT WITH ROY MCDONALD, ENVIRONMENTAL AND REGULATORY CONSULTANT

WHEREAS, on January 8, 2013 the Banning Utility Authority adopted Resolution No. 2013-01 UA, approving a Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant in the amount of $56,000.00 to cover a list of tasks and services including assisting the City with a United States Forest Service permit for Fiscal Year 2013; and

WHEREAS, as a result of the Forest Service letter dated January 15, 2013 (attached as Exhibit "B"), the proposal submitted by the City was not consistent with the Land Management. It has been determined it is necessary to go forward with the FERC; and

WHEREAS, therefore, additional services are necessary and modifications to the Agreement include assisting the City with the application process of the FERC power license; and

WHEREAS, the scope of work for the additional services includes, but is not limited to, the following: prepare the Draft Application for the License, circulate the Draft Application for the License, consult with key Agencies, prepare the Final Application for License, respond to Post-Filing Review Comments, respond to FERC Deficiency Notices and respond to FERC additional information request; and

WHEREAS, staff respectfully requests approval of the additional funding for the Professional Services Agreement with Roy McDonald for Environmental and Regulatory Consulting Services in an amount of $23,600.00 for a total contract amount of $79,600.00; and

WHEREAS, these services are expected to cover the Fiscal Year 2013 period and once completed the project will be re-evaluated to determine if additional services are necessary.

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

SECTION 1. The additional funding for the Professional Services Agreement with Roy McDonald for Environmental and Regulatory Consulting Services for the Whitewater Flume Restoration project is approved in the amount of $23,600.00 for a total contract amount "Not to Exceed" $79,600.00.

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 $23,600.00 and is authorized to make necessary budget adjustments related to these funds.

SECTION 3. The City Manager is authorized to execute the additional funding for the professional Services Agreement with Roy McDonald 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 9th day of April, 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. 2013-09 UA was adopted by the Banning Utility Authority of the City of Banning at its Joint Meeting thereof held on the 9th day of April, 2013.

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

Marie A. Calderon, Secretary
Banning Utility Authority

EXHIBIT "A"

Whitewater Flume Restoration Project
Scope of Services

Attachment A

Contract No. P01-13

Effective Date January 8, 2013

ATTACHMENT A, SCOPE OF SERVICES

In accordance with Article 1 of the Professional Services Agreement dated January 8, 2013 ("Agreement") between City of Banning, California ("CLIENT") and Roy McDonald ("CONSULTANT"), this attachment, Attachment A, sets forth services to be performed, the schedule for the services, and CONSULTANT's compensation for the services, as follows:

1. **Services to be performed**:

CONSULTANT will assist the CLIENT in implementing its responsibilities under its Agreement with the Southern California Edison Company (SCE) on the Whitewater Flume Restoration Project, including providing information and recommendations for actions to be performed by the CLIENT and its partners, Banning Heights Mutual Water Company (BHMWC), and San Gorgonio Pass Water Agency (Pass Agency); and assisting the CLIENT in carrying out the following tasks and subtasks:

Task A. FERC Surrender of Existing SCE License

1) Review/Comment on FERC DEA and FEA. Review the FERC Draft and Final EAs, assist the CLIENT in preparing comments on these documents, and file the comments with the FERC. The intent of the comments will be to support the CLIENT's efforts to gain acceptance of the CLIENT's preferred project repair proposals and to help obtain favorable terms and conditions for continued project operation and maintenance.

2) Respond to Comments on DEA and FEA. Review comments filed by others on the FERC Draft and Final EAs, assist the CLIENT in preparing responses to the comments of others, and file the responses with the FERC. The intent of the responses will be to provide clarification, existing documentation, and/or concise analyses to help assure the CLIENT's positions, and the supporting facts behind the CLIENT's positions, are understood and considered in FERC decision-making.

3) Review/Recommend on FERC Surrender Order. Review and assist the CLIENT in analyzing the FERC license surrender order, including providing recommendations for actions that might include providing comments and/or appealing specific terms and conditions. Assist the CLIENT in implementing the recommended actions.

Task B. FERC Licensing for 650 kW Project

1) Prepare Draft Application for License. Assist CLIENT in preparing a draft Application for License for a 650 kW Powerhouse No. 2 project pursuant to 18 CFR, Section 4.61 using information and analyses available in the SCE surrender application and in other existing, readily available documents.

2) Circulate Draft Application for License. Circulate the draft Application for License to agencies and Indian tribes pursuant to 18 CFR, Section 4.38 for a required 90-day review.

3) Consult with Key Agencies. After the draft Application for License is circulated, assist CLIENT in consulting with selected agencies on the need for the project and the contents of the draft Application for License, assuming three meetings in southern California and one meeting in Sacramento.

4) Prepare Final Application for License. Assist CLIENT in reviewing the agency and public comments and preparing responses to the comments using readily available existing information and analyses. Assist CLIENT in preparing the final Application for License.

5) Prepare and File Application for Water Quality Certification. Assist CLIENT in preparing and filing a Request for Section 401 Water Quality Certification with the State Water Resources Control Board.

6) File and Circulate Final Application for License. Assist CLIENT in filing the final Application for License with FERC and in circulating the final Application for License pursuant to 18 CFR, Section 4.38 for a required 60-day review.

7) Respond to Post-Filing Review Comments. Assist CLIENT in reviewing comments received on the Application for License and requests for new studies, analyses, or information, assist in preparing responses using readily available existing information, and file the responses with the FERC.

8) Respond to FERC Deficiency Notices. Assist CLIENT in preparing responses to any FERC-identified deficiencies using readily available existing information and analyses, and file the responses with the FERC.

9) Respond to FERC Additional Information Requests. Assist CLIENT in reviewing and preparing responses to FERC Additional Information Requests (AIRs) using readily available existing information, and file the responses with the FERC. Prepare recommendations if any new studies, information gathering efforts, or analyses required by the FERC.

Task C. Additional Support

1) Provide Additional Support. Support and assist the CLIENT in other matters associated with the Whitewater Flume Restoration Project to the extent such services can be performed within the budget identified in 3, below.

2. **Time of performance**:

The services set forth in Attachment A are to be performed during the period, January 1, 2013, through December 31, 2013.

3. **CONSULTANT's Compensation:**

The services set forth in Attachment A will not exceed $79,600, including all professional time and associated expenses. The break down is expected to be as follows:

Professional Time: 408 hours @ $172.00 per hour = $70,176.
Associated Expenses: Incidental Expenses = $1,224. Printing & Postage = $4,000
Travel Expenses = $4,200.

CONSULTANT's time will be billed at $172.00 per hour. Travel including airfares, mileage at $0.50 per mile, rental cars, and hotels, will be billed at cost with no mark-up. Incidental expenses, including such things as computer use, supplies, and telephone will be covered under a fee of $3.00 per each hour of CONSULTANT's time. CONSULTANT does not charge for meals during authorized travel. Travel time that causes the workday to exceed eight hours is charged at ½ the normal rate, or $86.00 per hour and incidental expense fees are not charged for these hours.

All other terms and conditions remain unchanged.

CLIENT	**CONSULTANT**
Signature	Signature
Andy Takata	Roy McDonald
Name (Printed or Typed)	Name (Printed or Typed)
Date	Date

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EXHIBIT "B"

Forest Service Letter
Dated January 15, 2013

USDA United States Department of Agriculture | Forest Service | San Bernardino National Forest Supervisor's Office | 602 South Tippecanoe Ave. San Bernardino, CA 92408 Phone: 909-383-5588 Fax: 909-383-5770 TTD: 909-383-5616

File Code: 2700
Date: JAN 16 2013

Duane Burk
Public Works Director
City of Banning
99 E. Ramsey Street
Banning, CA 92220

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
NUMBER: 7004 2510 0001 5578 0988

Dear Mr. Burk,

I am writing in response to your application for transportation and utility facilities on federal lands for the Whitewater Flume Project. I have reviewed your application according to the first and second level screening process established in 36 CFR 251.54. The screening criteria are enclosed for your reference.

Your proposal would convert the water works associated with the San Gorgonio Hydroelectric Project to a water supply project. The proposal includes repairing all diversion structures to prevent leaks, installing new pipelines, installing "blow-offs", repairing the remaining canals, developing temporary work areas, and expanding permanent work areas.

The proposal does not meet first level screening item 2 (36 CFR 251.54(e)(1)(ii)), which requires that:

> *The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.*

The forest land and resource management plan (LMP) has a number of applicable standards and guidelines which the current proposal is not consistent with, including:

- S46: Surface water diversions and groundwater extractions, including wells and spring developments will only be authorized when it is demonstrated by the user, and/or agreed to by the Forest Service, that the water extracted is excess to the current and reasonably foreseeable future needs of forest resources (LMP Part 3, page 10).
    - The proposed project would extract all the available water except for some high flow events, leaving no water for what would otherwise be a perennial stream system. Forest resources require a sustained flow of water to support a perennial riparian habitat.
- S48: For non-hydroelectric and exempt hydroelectric surface water development proposals, instream flows favorable to the maintenance and restoration of riparian dependent and aquatic resources and channel conditions will be required (LMP Part 3, page 11).
    - The proposed project does not provide any instream flows.

- S49: Require fish passage instream flows associated with dams and impoundments where fish passage will enhance or restore native or selected nonnative fish distribution and not cause adverse effects to other native species (LMP Part 3, page 11).
    - The proposed project does not propose flows to enhance or restore native or nonnative species.

I have also reviewed your proposal against the second level screening criteria. The regulations require that an authorized officer shall reject any proposal if the officer determines that any of the second level screening criteria apply. I have determined that second level screening, item 1 (36 CFR 251.54(e)(5)(i)) applies. Item 1 states:

The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses

As described in the LMP, the Whitewater River area is managed to support 24.2 miles of an eligible Wild and Scenic River. In addition, the Whitewater River supports the character of the San Gorgonio Wilderness.

The LMP describes the desired condition and program emphasis for these area(s):

- *"San Gorgonio Place is maintained as a naturally evolving and natural appearing landscape...Habitat conditions for threatened, endangered and sensitive species are improving over time. Habitat linkages are intact and functioning... Enhancement of plant and wildlife habitat and linkage corridors for threatened, endangered and sensitive species will be emphasized in all management activities...Wildlife corridors will be maintained or enhanced. Minimum in-stream flows and groundwater standards will be established for wildlife and to ensure that water use is managed at environmentally sustainable levels... (LMP Part. 2 pg. 87 & 88)*
- This proposal would not allow the landscape to evolve as rapidly over time due to aquatic resource impacts and limitations of available water to flora and fauna, ultimately impacting wildlife corridor connectivity and groundwater recharge.

The San Gorgonio Wilderness is in close proximity to the proposed location of the three diversions. This wilderness is one of the most heavily used in the nation.

Based on outstandingly remarkable scenery and wildlife values, most of the Whitewater River, including portions of its various forks is eligible for classification as a wild river. The river corridor supports a large amount of quality (remote, pristine, designated wilderness) and diverse habitat for regionally significant populations of Nelson's bighorn sheep (California rare), California spotted owl (Region 5 sensitive species, federal candidate), mule deer and black bear. Only small portions downstream of the SCE FERC license impoundments are not free-flowing, and thus must be currently managed differently than the remaining river course.

Your proposal would not be compatible with these uses.

Second level screening, item 2 states:

The proposed use would not be in the public interest

This criterion is further defined by forest service policy and direction. Uses that can be accommodated on lands under other ownership are not in the public interest. The City of Banning does not depend on this source of water in order to be a sustained water purveyor for the communities served. According to the City of Banning General Plan (Ch. IV, 2006), local groundwater has a minimum reliable capacity of 23,860 acre-feet per year (AFY). In 2003, water use was 10,053 AF from groundwater, indicating nearly 14,000 AFY is available and not utilized. Additional water is available through agreement with the San Gorgonio Pass Water Agency, which is importing water from the California State Water Project. The current SCE FERC diversion supplies an average of 1,500 AFY for the Banning Bench, where the primary use is irrigation. The water taken from this diversion is excess to the user, reducing the overall operating cost to the purveyor, and not a critical need due to the availability of other water sources in the area. The proposed use would not be in the public interest because it could be accommodated on other lands.

In summary, your proposal is not accepted because it is inconsistent with the Land Management Plan, incompatible with the purposes for which the lands are managed, and not in the public interest. Thank you for your time. If you have further questions, please contact Jerry Sirski, Forest Special Uses Program Manager at 909-382-2887.

Sincerely,

Jody Noiron

JODY NOIRON
Forest Supervisor

Enclosure

Excerpts from the Code of Federal Regulations

§ 251.54 Proposal and application requirements and procedures

(e) Pre-application actions—(1) Initial screening. Upon receipt of a request for any proposed use other than for noncommercial group use, the authorized officer shall screen the proposal to ensure that the use meets the following minimum requirements applicable to all special uses:

(i) The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.

(ii) The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.

(iii) The proposed use will not pose a serious or substantial risk to public health or safety.

(iv) The proposed use will not create an exclusive or perpetual right of use or occupancy.

(v) The proposed use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System lands.

(vi) The proponent does not have any delinquent debt owed to the Forest Service under terms and conditions of a prior or existing authorization, unless such debt results from a decision on an administrative appeal or from a fee review and the proponent is current with the payment schedule.

(vii) The proposed use does not involve gambling or providing of sexually oriented commercial services, even if permitted under State law.

(viii) The proposed use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded.

Code of Federal Regulations / Title 36 - Parks, Forests, and Public Property / Vol. 2 / 2012-07-01360

(ix) The proposed use does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

(5) Second-level screening of proposed uses. A proposal which passes the initial screening set forth in paragraph (e)(1) and for which the proponent has submitted information as required in paragraph (d)(2)(ii) of this section, proceeds to second-level screening and consideration. In order to complete this screening and consideration, the authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects. An authorized officer shall reject any proposal, including a proposal for commercial group uses, if, upon further consideration, the officer determines that:

(i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or

(ii) The proposed use would not be in the public interest; or

(iii) The proponent is not qualified; or

(iv) The proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization; or

(v) There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.

SUCCESSOR AGENCY OF THE DISSOLVED
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING
CONSENT

DATE: **April 9, 2013**

TO: **Chairperson and Successor Agency Board Members**

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

SUBJECT: **Amendment to Professional Services Agreement with Urban Futures, Inc.**

RECOMMENDATION:
That the Successor Agency of the dissolved Community Redevelopment Agency of the City of Banning ("Successor Agency"):

(1) Adopt Successor Agency Resolution No. 2013-03 SA *(Attachment 1)* authorizing a contract amendment of $50,000 for a new total of $280,000 with Urban Futures, Inc., for expert financial management related services with respect to the ongoing wind down of the Successor Agency; and

(2) Authorize the Administrative Services Director/Deputy City Manager to make necessary budget adjustments and to increase the current Purchase Order for the Professional Services Agreement with Urban Futures Inc.

BACKGROUND/ANALYSIS:
The former Community Redevelopment Agency of the City of Banning (now the Successor Agency) and Urban Futures, Inc. ("UFI") entered into an Original Professional Services Agreement dated September 30, 2009 and amended the Original Agreement on November 24, 2009, September 28, 2010, February 22, 2011, and December 13, 2011. The purpose of the Fifth Amendment to the Professional Services Agreement *(Attachment 2)* is to maintain ongoing expert financial consulting services with respect to the Successor Agency's wind down process as mandated by ABx126 and AB 1484. Specifically, Urban Futures Inc. serves as financial advisor as it relates to the Successor Agency's Recognized Obligation Payment Schedules, Due Diligence Reviews, Long Range Property Management Plan, Meet and Confer Meetings with the State Department of Finance, and with other miscellaneous activities as they develop.

FISCAL DATA:
These services have been included on the Recognized Obligation Payment Schedule, Line 13, as an ongoing expense during the wind down of the Successor Agency.

RECOMMENDED BY:

Bill R. Manis
Economic Development Director/
Public Information Officer

APPROVED BY:

Andrew J. Takata
City Manager

REVIEWED BY:

June Overholt
Administrative Service Director/
Deputy City Manager

Attachments:

1. Resolution 2013-03 SA
2. Fifth Amendment to Professional Services Agreement

ATTACHMENT 1

RESOLUTION NO. 2013-03 SA

RESOLUTION NO. 2013-03 SA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE DISSOLVED COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, CALIFORNIA AUTHORIZING AN INCREASE OF ADDITIONAL $50,000.00 IN THE BUDGET LIMIT OF THE PROFESSIONAL SERVICES AGREEMENT WITH URBAN FUTURES, INC.

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

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, a budget trailer bill, ABx126, requiring that each redevelopment agency in the State of California be dissolved; and

WHEREAS, an action challenging the constitutionality of ABx126 was filed in the California Supreme Court and on December 29, 2011, the Court modified and upheld ABx126, thereby causing the dissolution of all redevelopment agencies in the State of California, including the Community Redevelopment Agency of the City of Banning ("RDA") as of February 1, 2012; and

WHEREAS, the City of Banning, pursuant to the terms of ABx126, became the Successor Agency to the dissolved RDA ("Successor Agency") with the responsibility to wind down the affairs of the dissolved RDA under the terms of ABx126; and

WHEREAS, on June 27, 2012, the Legislature enacted and the Governor signed into law, to be effective immediately, Assembly Bill 1484 ("AB 1484"), which amended ABx126 and defined the Successor Agency as a separate public entity from the City; and

WHEREAS, ABx126 as amended by AB 1484 is hereinafter referred to as the ("Amended Dissolution Act"); and

WHEREAS, pursuant to the Amended Dissolution Act, the Successor Agency is required to prepare and adopt a Recognized Obligation Payment Schedule ("ROPS") every six months that lists all of the enforceable obligations of the dissolved RDA as defined in the Amended Dissolution Act for that specific six-month time period and thereafter submit the ROPS to the Oversight Board for approval, and then submission to the State of California Department of Finance, the Controller of the State of California, and the Riverside County Auditor-Controller; and

WHEREAS, the Consultant Services Agreement with Urban Futures Inc., has been included on each of the Successor Agency ROPS, Line Item 13, submitted to the Department of Finance and approved as an acceptable expense; and

WHEREAS, the former RDA and Urban Futures, Inc. entered into an Original Consultant Services Agreement on September 30, 2009, and amended the original agreement on November 24, 2009, September 28, 2010, February 22, 2011, and December 13, 2011, for a total agreement amount of $230,000.00; and

WHEREAS, the fifth amendment increase of $50,000.00, will bring the total contract with Urban Futures to $280,000.00 and said amendment will provide expert financial management-related services from Urban Futures, Inc. with respect to the Successor Agency's ongoing wind down process required under the Amended Dissolution Act; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Successor Agency of the dissolved Community Redevelopment Agency of the City of Banning, as follows:

SECTION 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

SECTION 2. The Successor Agency hereby approves the amendment increase of $50,000 to the Professional Services Agreement with Urban Futures and authorizes the Administrative Services Director/Deputy City Manager to make any necessary budget adjustments.

SECTION 3. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED this 9th day of April 2013.

_____
Robert E. Botts, Chairman
Successor Agency

APPROVED AS TO FORM
AND LEGAL CONTENT:

_____
David J. Aleshire, Successor Agency Counsel
Aleshire and Wynder, LLP

ATTEST:

_____
Marie A. Calderon, Secretary
Successor Agency

CERTIFICATION:

I, Marie A. Calderon, Secretary of the Successor Agency of the dissolved Community Redevelopment Agency of the City of Banning, do hereby certify that the foregoing Resolution No. 2013-03 SA was duly adopted by the Successor Agency of the dissolved Community Redevelopment Agency of the City of Banning, California, at a regular meeting thereof held on the 9th day of April 2013, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, Secretary
Successor Agency

ATTACHMENT 2

FIFTH AMENDMENT

TO PROFESSIONAL SERVICES AGRREMENT

FIFTH AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT BETWEEN THE SUCCESSOR AGENCY OF THE DISSOLVED COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING AND URBAN FUTURES, INC.

THIS FIFTH AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT ("Fifth Amendment") is made and entered into as of the 9th day of April 2013, by and between the SUCCESSOR AGENCY OF THE DISSOVLED COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING ("Successor Agency") and URBAN FUTURES, INC. ("Consultant").

RECITALS

A. The Former Community Redevelopment Agency of the City of Banning ("Agency") and Consultant previously entered into an Original Consultant Services Agreement dated September 30, 2009, (the "Original Agreement") in an amount not to exceed $50,000 to provide services with respect to the preparation of the Agency's Five-Year Redevelopment Implementation Plan and for certain on-call redevelopment implementation services; and

B. The Agency and Consultant entered into a First Amendment to the Original Agreement dated November 24, 2009 (the "First Amendment") to provide for up to $50,000-worth of additional consulting services with respect to economic analysis of various of the Agency's current and future projects, which increased the not to exceed maximum to $100,000; and

C. The Agency and Consultant entered into a Second Amendment to the Original Agreement dated September 28, 2010 (the "Second Amendment") to provide for up to $30,000-worth of additional consulting services with respect to the Agency's Downtown Economic Development Program, which increased the not to exceed maximum to $130,000; and

D. The Agency and Consultant entered into a Third Amendment to the Original Agreement dated February 22, 2011 (the "Third Amendment") to provide for up to $50,000 worth of additional consulting services with respect to the Agency's Downtown Economic Development Program, which increased the not to exceed maximum to $180,000; and

E. The Agency and Consultant entered into a Fourth Amendment to the Original Agreement dated December 13, 2011 (the "Fourth Amendment") to provide for up to $50,000 worth of additional consulting services with respect to the Agency's Downtown Economic Development Program and any future redevelopment related financial related services, which increased the not to exceed maximum to $230,000; and

F. The purpose of this Fifth Amendment is to provide for up to $50,000 worth of additional consulting services with respect to the Successor Agency's ongoing wind down process as mandated by ABx126 and AB 1484, which increases the not to exceed maximum to 280,000; and

G. Collectively, the Original Agreement, First Amendment, Second Amendment, Third Amendment. Fourth Amendment, and this Fifth Amendment are hereinafter referred to as the "Agreement"; and

H. It now becomes necessary to further amend the Agreement and both parties are desirous of such amendment.

NOW, THEREFORE, in consideration of the mutual undertakings herein, the parties agree that said Agreement be further amended in the following particulars only:

Section 1. Section 4(a) is hereby amended to increase the agreement limit by $50,000, to a new total of $280,000 for additional expert financial management-related services from Consultant with respect to the Successor Agency's ongoing wind down process as it relates to the dissolved Redevelopment Agency.

Section 2. Except as expressly provided in this Fifth Amendment, all other provisions of the Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the Successor Agency and the Consultant, through their duly authorized officers, have executed this Fifth Amendment, effective as of the date first above written.

"SUCCESSOR AGENCY"

OF THE DISSOLVED COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING

By: _____
Robert E. Botts, Chairman

ATTEST:

By: _____
Marie Calderon, Secretary
Successor Agency

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
David Aleshire, Counsel
Successor Agency

"CONSULTANT"

URBAN FUTURES, INC.

By: _____
Marshall F. Linn, CEO