

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

September 10, 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 a joint meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency and the Banning Utility Authority.

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

I. CALL TO ORDER

- . Invocation – District Elder Preston Norman Jr., Praise Tabernacle Community Church
- . Pledge of Allegiance
- . Roll Call - Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE

PUBLIC COMMENTS – *On Items Not on the Agenda*

A five-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 five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, and appropriate Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

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

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

INTRODUCTIONS:

- 1. Ben Coffey, Utility Services Assistant (ORAL)

PRESENTATIONS:

- 1. Results from the First Inland Empire Underwater Robotics Competition held by the Banning Science and Technology Center.

IV. CONSENT ITEMS

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

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

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

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

1.	Approval of Minutes – Special Joint Meeting – 07/16/13	1
2.	Approval of Minutes – Special Meeting – 07/23/13 (Closed Session)	13
3.	Approval of Minutes – Regular Meeting – 07/23/13	14
4.	Approval of Minutes – Special Meeting – 08/13/13 (Closed Session)	53
5.	Approval of Minutes – Regular Meeting – 08/13/13	54
6.	Approval of Accounts Payable and Payroll Warrants for Month of June 2013	62
7.	Approval of Accounts Payable and Payroll Warrants for Month of July 2013.	65
8.	Acceptance of Notice of Completion for Project No. 2013-01, Repairs to Water Well M-3	68
9.	Resolution No. 2013-74, Awarding the Bid for Project No. 2013-03 EL, Downtown Underground Project – Phase 2 to Southern California West Coast Electric, Inc. of Beaumont, CA in the amount not to exceed \$368,482.00 including taxes	72
10.	Resolution No. 2013-80, Approving the Local Resources Adequacy Capacity Purchase with Shell Energy North America for Calendar Year 2014	78
11.	Resolution No. 2013-81, Awarding the Bid for Project No. 2013-04 EL, City of Banning Hydroelectric Facility Rehabilitation Contract to Charles King Company, Inc. of Signal Hill, CA in the amount not to exceed \$638,500.00 including taxes	98
12.	Resolution No. 2013-82, Awarding the Construction Contract for Project No. 2013-05, Construction of a New Restroom at City Hall to Whitmore Construction, Inc., of Banning, CA in an amount of \$29,990.00 and allowing a 10% contingency of \$2,999.00 and Rejecting All Other Bids	104
13.	Resolution No. 2013-83, Approving the Freeway Maintenance Agreement with the State of California Department of Transportation . . .	110

14. Resolution No. 2013-84, Authorizing the Submittal of an Application, Acceptance of an Allocation of Funds and Execution of a Grant Agreement with the California Department of Transportation for an Airport Improvement Project Matching Grant 125

- Open for Public Comments
- Make Motion

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

V. CONSENT ITEM

Motion: That the City Council approve Consent Item 1.

1. Approval of the Settlement Agreement, Release of All Claims, and Bill of Sale for Personal Property between The Haven Company, Inc. and the Banning Successor Agency 129

VI. REPORTS OF OFFICERS

1. Long-Range Property Management Plan Staff Report 143
Recommendation: That the Successor Agency Board adopt Resolution No. 2013-10 SA, Approving the Long-Range Property Management Plan Pursuant to California Health and Safety Code Section 34191.5 and Approving Certain Related Actions.

Adjourn Joint Meeting and reconvene the regular City Council Meeting.

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

VII. REPORTS OF OFFICERS

1. Resolution No. 2013-15 UA, Awarding the Construction Contract for Project No. 2011-01W, Water Department Parking Lot and Perimeter Wall Improvement and Rejecting All Other Bids. Staff Report 200
Recommendations: 1) That the Banning Utility Authority adopt Resolution No. 2013-15 UA, Awarding the Construction Contract for Project No. 2011-01W, Water Department Parking Lot and Perimeter Wall Improvements to Cooley Construction, Inc. of Hesperia, CA for

An Amount of \$530,086.70 and Allowing a 10% Contingency of \$53,008.67; and II) Authorizing the Administrative Services Director to make the necessary budgeted adjustments, appropriations, and transfers to fund this project and to approve change orders within the 10% contingency of \$53,008.67.

2. Resolution No. 2013-16, Approving the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc.
 Staff Report 206
Recommendations: I) That the Banning Utility Authority adopt Resolution No. 2013-16 UA, Approving the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc. to extend the scope of services for an additional five (5) years and thereby amend the termination date of the Original Agreement to September 20, 2018; and II) Authorizing the City Manager to execute the First Amendment to the Maintenance and Operations Agreement with United water Environmental Services, Inc.

Adjourn Joint Meeting and reconvene the regular City Council Meeting.

VIII. REPORTS OF OFFICERS

1. Resolution No. 2013-85, Typographical Correction and Clarification Regarding the 26-Acre Property that was Rezoned to Very High Density Residential for the Housing Element.
 Staff Report 214
Recommendation: That the City Council adopt Resolution No. 2013-85, Providing Clarification Regarding the 26-Acre Property that was Rezoned From Medium density Residential to Very High Density Residential for Conformance with the Housing Element (Property located at the westerly portion of Sunset Avenue and Bobcat Road and south of Pershing Creek.)
2. Resolution No. 2013-62, Authorizing the City Manager to Execute and Send Letters of Support or Opposition Consistent with Goals Adopted by the City Council.
 Staff Report 238
Recommendation: That the City Council adopt Resolution No. 2013-62, Authorizing the City Manager to Execute and Send Letters of Support or Opposition Consistent with Goals Adopted by the City Council.
3. Appointment of Mayor Ordinance
 Staff Report 252
Recommendation: Consider whether to change the rotational system of appointment of Mayor.

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

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

X. ITEMS FOR FUTURE AGENDAS

New Items – None

Pending Items

1. Schedule Meetings with Our State and County Elected Officials *(Sept./Oct.)*
2. Let's Move – Healthy Initiative *(Nov. 12)*
3. Workshop Regarding Future of Airport
4. Report on Moving Station 20 back to original firehouse. *(wait for new Battalion Chief)*
5. Workshop on how appointments are made to City Commissions/Committees, attendance, and look at advisory boards/citizens review committee.
6. Open House: 5 to 7 p.m. – Wed. in October – Open to Public

XI. 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, 7 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 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. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

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

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

07/16/13
SPECIAL JOINT MEETING

A special joint meeting of the Banning City Council, Planning Commission, Parks and Recreation Commission was called to order by Mayor Franklin on July 16, 2013 at 3:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

PLANNING COMMISSION
MEMBERS PRESENT: Commissioner Barsh
Commissioner Ellis
Commission Shaw

MEMBERS ABSENT: Commissioner Hawkins
Chairman Siva

PARKS AND RECREATION
COMMISSION PRESENT: Commissioner Dickson
Commissioner Elmore
Commissioner Miller (arriv. 3:30 p.m.)
Commissioner Sanchez

MEMBERS ABSENT: Chairman Topete

OTHERS PRESENT: Andy Takata, City Manager
June Overholt, Administrative Services Director
Lona Laymon, Assistant City Attorney
Zai Abu Bakar, Community Development Director
Jessica Hicks, Office Specialist
Marie A. Calderon, City Clerk

PUBLIC COMMENTS

There were none.

WORKSHOP ITEMS/REVIEW

Assistant City Attorney Lona Laymon introduced herself to those present stating that she would be giving the presentation/review on the following items:

1. Review of the Brown Act
2. Conflict of Interest
3. Parliamentary Procedure
4. Meeting Procedures

Mrs. Laymon addressed those present stating that she would be going over the Brown Act, Civility and Parliamentary Procedure. The purpose of this session is to familiarize you with the Brown Act, help you run a meeting and to help you all get along. She will also be going over the new procedures manual that was adopted in 2012 and this manual supersedes a lot of old resolutions and combines all meeting procedures all under one cover. She started her power point presentation (see Exhibit "A") going over the Brown Act (AKA: The Open Meeting Laws) and said that the Brown Act applies to legislative bodies and advisory bodies. It does not apply to bodies of less than a quorum. She continued the presentation going over commissions and committees and the definition of a meeting and means of communication. She said that you should avoid email and texting because your emails and text message are also subject to public disclosure under the Public Records Act and it does not matter if you are messaging from a personal device and she went over the case that happened in San Jose. Mrs. Laymon continued on the topic of "What is a Meeting" and stated that there are conferences and community meetings the Council may attend and to remember that if there is a quorum of the Council, you cannot discuss any City business amongst yourselves. There were some questions from the Council in regards to attending a public meeting organized by residents in the community and participation in those meetings and this community meeting was put together to discuss high density. City Attorney Laymon said that in her opinion if two or more of the Council were to attend the meeting the safest thing to do is not to discuss this issue or any City business at the meeting and don't sit together and make no speeches, etc. There was some further discussion on this issue. She said that the Council can also attend noticed meetings of other legislative bodies or another local agency but to remember no talk of City business. She continued on with her presentation going over the Types of Meetings, Agenda Requirements, Public Comments, Public Participation, and Closed Sessions.

Assistant City Attorney Laymon continued with Part II of her power-point presentation in regards to Parliamentary Procedures (How to Run a Meeting) and focused on Parliamentary Procedure for a public hearing item. In regards to "Recusals" there were various questions from the Commissioners when it comes to developers giving a presentation for instance to the Parks and Recreation Commission and if they live in an area within a certain distance where this development is going should they recuse themselves from the meeting. Mrs. Laymon felt it was probably best if they recused themselves from the meeting. She continued on with Parliamentary Procedures for issues involving hearing and comments, major mistakes made at a hearing and with public comments, and other issues of due process. She also commented on motions, amending motions, and substitute motions and she gave some examples. She said in regards to voting it may be by consensus, roll call, or done electronically.

Attorney Laymon went over briefly the Rules of Civility – Rules of the City Council, excused absence, amicus briefs, and public censure.

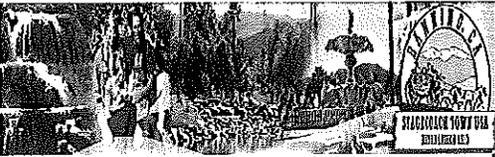
ADJOURNMENT

By common consent the meeting at 4:51 p.m.

Marie A. Calderon, City Clerk

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

The Brown Act, Civility & Parliamentary Procedure



AW ALESHIRE & WYNDER, LLP
ATTORNEYS AT LAW

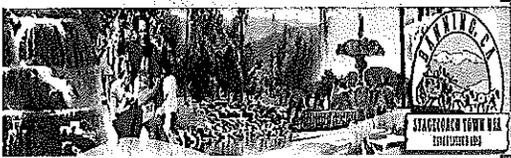
Part I



THE BROWN ACT

Session Objectives

1. To familiarize you with the Brown Act
2. To help you run a meeting
3. To help you all get along!



THE BROWN ACT

AKA: The Open Meeting Laws

"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency."

(Gov. Code § 54953)



NEW PROCEDURES MANUAL

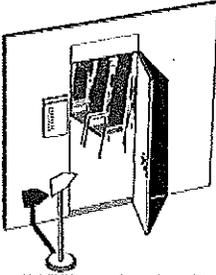
- Adopted in 2012.
- Now Incorporates Most of the City's Old Civility Rules and Meeting Procedures All Under One Cover.



APPLIES TO "LEGISLATIVE BODIES" AND ADVISORY BODIES

- Commission and committee bodies.
- Does *not* apply to bodies of less than a quorum.
- Body which is created by formal action to provide an advisory role.
- Nonprofits--including an appointed councilmember and which receives City funding.

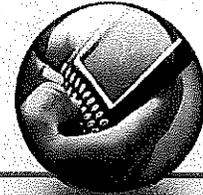
"WHAT IS A MEETING?"



Definition: "Meeting" includes any gathering of a *majority* of the members of a legislative body to *hear, discuss, or deliberate* upon any item which is within *its subject matter jurisdiction*.

MORE on Email & Texting

- ✓ Remember, your emails and text messages are also subject to public disclosure under the Public Records Act.
- ✓ Does NOT matter if you're messaging from a personal device!



"WHAT IS A MEETING?"

Means of Communication: A meeting includes *any use of direct communication, personal intermediaries, or technological devices* which are employed by a *majority* of the members of the legislative body to *develop a collective concurrence* on action to be taken by members of the legislative body.

(§ 54952.2)



WHAT IS A MEETING, CONT...

Social gatherings are permitted:

- **Conferences:** Quorum may attend conference or similar publicly-open gathering on issues of general public interest. Quorum cannot discuss amongst themselves any City business.
- **Community Meetings:** Like conferences, quorum can attend open and publicized meeting held by another organization on a topic of local community concern. Again, quorum cannot discuss City business amongst themselves.

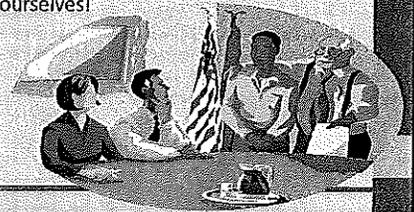
WHAT IS A MEETING, CONT...

- Meetings take place if quorum receives information on, discusses, or deliberates on any item on which the body may legally act.
- Serial and rotating meetings or polling prohibited.
 - Beware Email & Texting!!!!



WHAT IS A MEETING, CONT...

- **Other Legislative Bodies:** Quorum can attend an open and *noticed* meeting of: (1) another body of the local agency and (2) a legislative body of another local agency. Again, no talk of City business amongst yourselves!



WHAT IS A MEETING, CONT.

Are Collective Briefings OK? Not collective, but individual briefings probably OK



AGENDA REQUIREMENTS, CONT.

- *Adjourned/Continued Meetings:* Can adjourn to specified time or to next regular meeting.
- No new agenda needed if adjourned meeting is less than 5 days away.
- Clerk must post notice of adjournment within 24 hours of the adjournment.
- Minority or Clerk can adjourn for lack of quorum.



TYPES OF MEETINGS

Meetings generally must be in City boundaries:

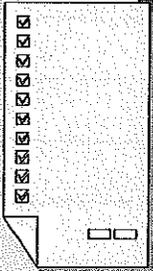
- ❖ Regular—Formally established time/place.
- ❖ Special—Called by presiding officer/majority.
- ❖ Adjourned/Continued Meetings
- ❖ Emergency Meetings
 - Actual public threat.



AGENDA REQUIREMENTS, CONT.

Brief description sufficient to inform public of the nature of each item. Which of these is not enough:

- "Consideration of A Report Regarding Traffic on Eighth Street".
- "Consideration of contract with ABC Consulting".



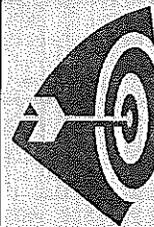
AGENDA REQUIREMENTS

- *Regular Meetings:* Written agenda must be prepared and posted 72 hours prior to each regular or adjourned regular meeting of each legislative body.
- *Special meetings:* Must give 24 hour notice that serves just like an agenda.
 - Cannot adopt ordinances at specials.



Stay on Point!

Generally cannot discuss items not on the agenda. **Exceptions:**



Can add a new item, but body must find: (1) matter arose after agenda was posted, and (2) there must be a 2/3 vote of membership—unanimous vote if less than 2/3 present, and (3) *the action needs immediate action!*

Agendas... More Exceptions

No discussion of any item not on agenda... *Except:*

- ❖ Brief responses.
- ❖ Statements or questions.
- ❖ Questions for clarification.
- ❖ Reference to staff or other resources for factual information.
- ❖ Request staff to report at a subsequent meeting.
- ❖ Request Future Agenda items (but no deliberations).

CLOSED SESSIONS

FOUR GROUNDS FOR CLOSED SESSION:

- Real Property Negotiations
 - Pending/Anticipated Litigation
 - Labor Negotiations
 - Personnel Matters
- ✓ Must give employee 24 hr written notice of right to have charges heard in open session if specific charges.



Public Comment...

Public has the right to talk about anything they want that's not on the agenda. We do that at the start of the meeting.

Don't debate with public! You still have to stick to the agenda.

Members of the public get to speak on *each and every item* as it comes up *before deliberations have been made.*

Optional: Can also give public a chance to speak on non-agenda items at end of meeting.



CLOSED SESSIONS

Pending Litigation:

- Adjudicatory proceeding
- Initiation of Litigation
- Exposure to Litigation: Only under specified circumstances



Brown Act Mandates Public Participation In Meetings.

- ❖ Anyone can attend open meetings.
- ❖ Cannot require names, questionnaires, or conditions to attendance.
- ❖ Public may record proceedings by video, film or audiotape.
- ❖ If meeting willfully interrupted or order cannot be restored by removing only the disrupting individuals, body may order room cleared.



CLOSED SESSIONS

- ❖ Confidentiality applies!
- ❖ Most salary & budget discussions should be open session. Cannot use closed session to discuss funds, funding priorities, or budget, salaries, contract negotiations (unless labor negotiations)...



Must reconvene in open session and make any required disclosure...

- ❖ No need for minutes in closed session, but any reporting-out should be reflected in open session minutes.
- ❖ Announce details of vote where action is taken.



Part II



PARLIAMENTARY PROCEDURE (How To Run A Meeting)

The Brown Act

PENALTIES: Failing to Comply

- ❖ Injunction, Mandamus & Declaratory Relief—and a violation may cause City to pay attorney fees of the plaintiff.
- ❖ Voidability of Decision.
- ❖ Challenger **must** demand corrective action within 90 days of action -- or 30 days if agenda issue.
- ❖ City has 30 days to correct action before suit.

Parliamentary Procedures

FOR A PUBLIC HEARING ITEM

- ❖ Recusals? Conflict Statements.
- ❖ Adequate Notice?
- ❖ Staff Presentation
- ❖ Ask All Factual Questions
- ❖ Open Public Hearing
- ❖ Receive Testimony
- ❖ Close Hearing
- ❖ Ask Any Additional Questions
- ❖ Make Decision
- ❖ Recused Officers Return for Next Item



When to ask for help

- Whenever you have doubts!
- Do NOT wait for the meeting!



Recusals Come First!

- Most often occurs where there's a conflict under the State Political Reform Act.
- If you have a conflict, you cannot participate in the decision at all—in fact, you cannot even attempt to influence the matter through City staff or official colleagues.
- This is true for all matters on the agenda—not just public hearings.
- Leave the room!



When Do I Have A Conflict?

- Beyond the Scope of this Presentation, but main pointers:
- You must have a FINANCIAL interest in the matter before your legislative body.
 - Most common example: you own property within 500 feet of an area that is the subject of your body's decision.
- FREE TRAINING: <http://www.fppc.ca.gov/index.php?id=477>
 - And this satisfies your AB 1234 training requirement—a state mandated requirement for you officials.

****The FPPC will also help you, for free, with specific conflicts questions at: 1-866-ASK-FPPC (1-866-275-3772).**



Parliamentary Procedure

❖ Address Questions Raised by Speakers: Chair note questions, wait until close of hearing, and ask for response by staff to each question

❖ Continuation:

- ✓ time certain
- ✓ matter vs. hearing
- ✓ reopen



Final Tips on Conflicts

- Staff cannot predict every possible conflict—the laws put the burden on the official to identify possible conflicts.
- Raise any possible conflict EARLY & WELL BEFORE THE MEETING. A conflict usually entails extremely complex laws that apply differently to every situation.
 - If you don't raise a possible conflict issue well in advance of a meeting, expect to be told to abstain.

Parliamentary Procedure

Major Mistakes Made At Hearings & With Public Comment!!

- Member expresses opinion prior to commencement of hearings.
- Debating with speakers.
- After the close of hearing, members raise issues or facts not presented at hearing; citizens readdress Council.
- Not letting public comment before deliberations on each item (including Closed Session).

Parliamentary Procedure

ISSUES INVOLVING HEARING & COMMENTS

- ❖ Remember: Non-hearing items subject to comment, too.
- ❖ Balance: Everyone gets their say vs. length of meeting.
- ❖ Establish rules at beginning of comment time.



- ❖ Council has rules but can adjust for special circumstances
 - Time limit for speaking
 - Alternate sides vs. one side
 - Time limit for hearing

Other Issues of Due Process

Extra Meeting Contacts with Developers and Citizens:

- Avoid initiation of contact.
- If you are contacted, be polite, avoid stating viewpoint.
- At hearing, enter into record any information which will be relevant to hearing.



Other Issues of Due Process

Extra Meeting Contacts with Developers and Applicants:

- Quasi-judicial proceedings: extra-meeting contacts can give appearance of impropriety.
- Site inspections okay.
 - But, should disclose before hearing. . .



MOTIONS... Amending Motions

- ✓ A motion to amend shall be discussed only as to the amendment.
- ✓ Amendments shall be voted first, then the main motion as amended—Vote backwards: last motion is voted first.
- ✓ Alternatively, the original maker of the main motion may agree to revise the original motion and if the second agrees to second the revised motion, the body may vote on the main motion as revised.



MOTIONS:

When a motion is made and seconded, it shall be stated by the Presiding Officer before debate.

A motion so stated shall not be withdrawn by the mover without the consent of the person seconding it.



MOTIONS... Substitute Motions

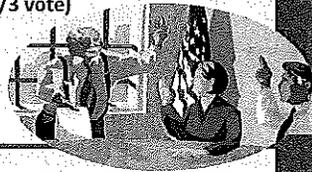
- A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to **throw out** the basic motion on the floor, and **substitute a new and different motion for it**.
- The decision as to whether a motion is really a 'motion to amend' or a 'substitute motion' is left to the chair.
- Substitute motions are voted first and, if passed, terminate the original motion.



MOTIONS:

When a motion is made—that's the "main motion". Other motions may be made on "top" of the main motion and they will precede in the following order:

- ✓ Adjourn
- ✓ Fix hour of adjournment
- ✓ Table (No longer in Robert's Rules)
- ✓ Close Debate (needs 2/3 vote)
- ✓ Amend/Substitute
- ✓ Postpone



Robert's Rules of Order...

- ❖ They are the "standard" rules and are even incorporated into our Procedures Manual
- ❖ But, they can be problematic—confusingly written; not really tailored to local government bodies.
- ❖ There are other good summaries out there: The Institute for Local Government endorses Rosenberg's summary of parliamentary rules, which can be found in a short video training course here: <http://vimeo.com/25152753>



Above All Else—Vote Clearly!

- ❖ Remember the prime directive of Robert's Rules is to ensure the clarity of the vote and what was voted upon.
- ❖ There are no real legal ramifications for failing to follow the technical aspects of parliamentary rules—so long as every member had an opportunity to speak and the will of the majority is clear.



VOTING, . . . What Majority?

- ✓ Usually, majority of body present can act.
 - ✓ E.g., 3 officers present, need only 2 votes.
- ✓ ***But***—Resolutions, orders for the payment of money, and all ordinances require a recorded majority vote of the total membership—***Council ONLY!*** (\$36936.)
 - ✓ E.g., if 3 Councilmembers present, need all 3 votes to pass a resolution.
- ✓ Some actions require a super-majority vote.
 - ✓ E.g., urgency ordinances, resolutions of necessity, calling of election on general tax.

VOTING:

- There may be a simple consensus, or a vote either electronically or by roll call.
- A member who abstains due to reasons of conflict shall, for purpose of the item under consideration, be considered as if absent.
- One abstaining for reasons other than conflict shall be counted as present for purposes of a quorum and such abstentions are counted with the majority.



Part III



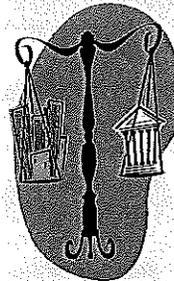
RULES OF CIVILITY

VOTING, . . . Tie Votes

Tie Votes shall be lost motions unless an additional motion is made that obtains a majority vote to break the tie.

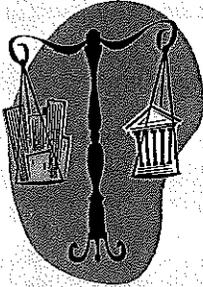


Rules of the City Council



- Many old rules now in the Manual.
- Attend the meetings. From the Manual: "Any member who fails to attend any of the meetings of the Legislative Body for 60 days, unless such absences are excused, shall surrender the office and be deemed to have surrendered the office."

Rules of the City Council, Cont.



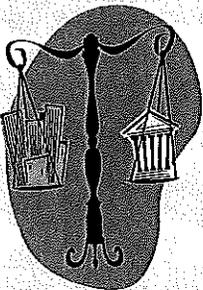
- Any councilmember may request legal opinion.
- BUT! City attorney cannot act as the personal attorney of any one Councilmember.
- City Attorney serves the full Council, not any one member or segment.

Rules of Civility



- Make no promises on behalf of Council, Board or Commission.
- No personal comments re your colleague officials.
- Distinguish City from personal interests.
- No lobbying City folks for personal or business interest.
- Be respectful of fellow officials and their opinions.
- All council members are equal.
- Mayor is spokesperson for Council with media.

Rules of the City Council, Cont.



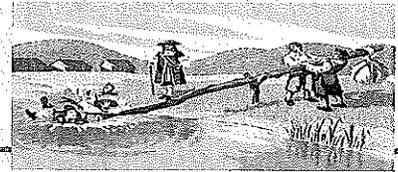
- Approval of budget is not authorization of expenditure or adoption of job positions.
- Any "amicus briefs" filed by City Attorney are subject to Council review and maintained by City Clerk.

Public Censure:

Violation of Council Rules or any law may result in public censure.

It's a motion by fellow officers sending a "strong message" of disapproval.

Officer to be censured has right of notice and opportunity to cure misconduct.

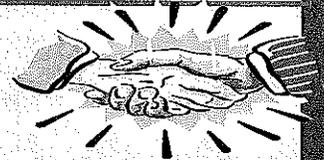


Rules of Civility

- ✓ Public Meeting: Be civil; honor chair; do not get personal.
- ✓ Council/Staff: Do not criticize; disrupt; demand:
 - ✓ Check with staff on correspondence.
 - ✓ Do not get involved with administrative function.
 - ✓ Do not attend staff meetings unless requested.
 - ✓ Do not solicit political support.
 - ✓ Do not participate in code enforcement or other similar investigations.



Best Practices



- Think fairness and merit-based decision-making in your decisions.
- Council members as team; respect each other and the public.
- Keep politics separate from relationships with agency staff.
- Avoid committing/commenting before the public hearing.

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

07/23/13
SPECIAL MEETING

A special meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Franklin on July 23, 2013 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: Councilmember Botts (*excused*)

OTHERS PRESENT: Andrew J. Takata, City Manager
 June Overholt, Administrative Services Director
 David J. Aleshire, City Attorney
 Melanie Poturica, Attorney - Liebert Cassidy Whitmore
 Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney said the Council will meet in closed session in regards to one case of potential litigation pursuant to Government Code Section 54956.9. City Attorney said that there is also a second potential litigation matter that they have just become aware and would ask Council to add to the agenda a second potential litigation matter. The other item is real property negotiations pursuant to the provisions of Government Code Section 54956.8 regarding 42 W. Ramsey Street to give a status report. With respect to the potential litigation matter mentioned to be added to the closed session agenda Council Member Peterson is not going to participate in that closed session item.

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

Motion Welch/Peterson to add the second potential litigation matter to the closed session agenda pursuant to Government Code Section 54956.9. Motion carried, all in favor.

Meeting went into closed session at 4:05 p.m. Council Member Peterson came into closed session at 4:40 p.m. Closed session reconvened at 5:06 p.m.

ADJOURNMENT

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

Marie A. Calderon, City Clerk

A regular meeting of the Banning City Council was called to order by Mayor Franklin on July 23, 2013 at 5:11 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: Councilmember Botts (*excused*)

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

The invocation was given by Pastor Tate Crenshaw of LifePoint Church. Councilmember Peterson led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSE SESSION

City Attorney stated that the City Council discussed in closed session a matter of potential litigation. The real property negotiations concerning 42 W. Ramsey St. were not discussed. He said the Council also added a second matter of potential litigation, a status report was given and no reportable action was taken.

PUBLIC COMMENTS/CORRESPONSE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Fred Sakurai, a Banning resident, expressed his appreciation for the City of Banning's Chief of Police, Leonard Purvis. He has promoted programs for the youth of the city and he is always very visible at all city functions. He thanked Chief Purvis.

Barbara Hanna, Banning resident and Member of the Centennial Committee, requested that tonight's meeting be closed in memory of Reverend John Domas. He was a Catholic Priest in Banning and Beaumont as well as the founder of HELP, a food pantry in this area. She also gave an update on the success of the Centennial celebration of July 6, 2013. She said it is

proposed that Banning have its fireworks display the Saturday after the 4th of July every year. Upcoming events include a performance at the Dorothy Ramon Learning by the group Lionheart and the Dorothy Ramon Learning Center Gala on August 10th. Stagecoach Days is also coming soon. She requested that she be able to give a presentation to the Council in September on events coming in the fall.

Ellen Car, a representative of Tender Loving Critters Animal Rescue, requested that Beaumont Animal Care come to a Council meeting to inform residents of the services they do and do not offer to our city. She expressed her concern for the animal control in Banning.

Bill Dickson, Coordinator for Volunteer Police of Banning, said if anyone is looking to volunteer with the police department please call him at 951-282-1138.

Jim Price, President of Banning Pass Little League, said the League just finished their second season and their tournaments. The Banning 12 year old's team finished at No. 4 in all of Southern California. He praised the team for doing an outstanding job. He said that the League appreciates any donations.

CORRESPONDENCE – There was none.

PUBLIC HEARING:

1. General Plan Amendment No. GPA 13-2504 and Zone Change No. ZC 13-3502 Related to the Adoption of the 2008-2013 Housing Element.
(Staff Report – Zai Abu Bakar, Community Development Director)

Director Abu Bakar addressed the Council presenting her staff report as contained in the agenda packet. This is a controversial issue that affects the entire community and goes back to 2008. What we are dealing with today are the consequences for not having a State Certified Housing Element; the last Housing Element approved by the State was in 1993. By having this public hearing we can bring the City's Housing Element into compliance with State Law and without having the current Housing Element for the period 2008 to 2013 certified by the State before October 15, 2013, this City will suffer potential consequences as indicated in the staff report and she went over those consequences. The other concern is the loss of eligibility for grant funds. Currently the City has received state and federal grants in the amount of \$60 million dollars and that money is spent for transportation, airport improvements, park improvements and many other things in the community. About \$20 million of those dollars currently are invested in the Sunset Grade Separation. Referring to her slideshow (*Exhibit A*), she went over the history of how the rezoning areas were chosen. She explained the processes and former rezoning proposals that were brought to Council and the recommendations Council made that contributed to the current rezoning proposal. She hears the resident's concerns and the Council's concerns. What they had to do was to go back and relook at what they could possibly do to get this Housing Element certified by the State. She said that she has spoken to the housing element consultant, John Douglas, some of her counterparts in other communities that are going through the housing element process and also spoke to State Housing and Community Development. She said that the best thing that they can do is to recommend further elimination of the two parcels on the east side of Dysart Park. They still need the 26 acres that is located on Sunset to be able to meet the rezoning that is required by the State. She said that the other proposals were included in the staff report. She requested that the City

Council adopt Resolution No. 2013-75, approving General Plan Amendment No.13-2504 finding that the Initial Study/Mitigation Negative Declaration satisfies the requirements of CEQA (California Environmental Quality Act), and adopt the 2008-2013 Housing Element. As part of that recommendation she is requesting that the Council drop the two sites that are located at the east side of Dysart Park (APNS 537-190-020 and 537-190-021). The second recommendation would be to introduce for the first reading Ordinance No. 1466, Approving zone Change No. 13-3502 in conformance with Program 1-2 of the Housing Element with the deletion of the two sites that she mentioned. She is also requesting that the City Council give the City Manager the authorization to direct staff to make minor modifications as they work through the certification process.

Mayor Franklin said that she wanted to make some clarifications and stated that this is State mandated and not City driven, and that this rezoning would satisfy the requirements through our next housing cycle. She also explained that failure to meet this housing cycle brings up the requirement from 2,079 units up to 3,544 units. This hearing only pertains to the housing element and has nothing to do with any plans any developer maybe working on at this point and this is specifically for the housing element for the State. Anytime a developer comes forward they will have to work on mitigating measures for their specific development and go through another public hearing. She explained ignoring this state obligation would have consequences.

Director Abu Bakar stated that what Mayor Franklin just stated is correct.

Director Abu Bakar and the Housing Consultant, John Douglas, answered Council questions regarding the amount of high density units, why a housing element has not been adopted since 1993, and gave clarification on the rezone and alternative locations for rezoning. They also explained the potential repercussions if the rezone was not approved.

Mayor Franklin asked if the housing element is approved, can it be amended if another property is picked to substitute out a current property in the adopted housing element.

Director Abu Bakar said yes, if another property is found to be better suited for the rezone then it can replace a rezoned area in the current housing element. An environmental review would need to be done on the area, as well as, another public hearing process in order to make the change.

Councilmember Peterson asked if this rezoning is going to include 981 Charles, the area that was rezoned from residential to industrial. The houses that are currently in this area are now unable to be sold.

City Manager said we can add that other zoning to the next housing element which needs to be adopted by February 2014.

Mayor Franklin opened the item for public comments

The following people spoke against or in favor of this item (*any written comments handed to the City Clerk at the meeting have been attached as exhibit B to the minutes*):

Don Smith, resident of Banning (*See Exhibit B*)

Inge Schuler, resident of Banning (*See Exhibit B*)

Gene Kadow, resident of Banning and Board Member of Mt. San Jacinto College

Barbara Hanna, resident of Banning

Susan Savolainen, resident of Banning (*See Exhibit B*)

Heather Kendrick, resident of Cabazon

Peter Pitassi, representing his partners and himself said they are the owners of approximately 850 acres south of Westward between Sunset and San Gorgonio and 35 different parcels make up that 850 acres and they do agree with staff recommendations to remove the two parcels and regarding the parcel on Sunset Avenue, candidly, they are neutral on the issue.

Councilman Peterson addressed Mr. Pitassi stating that the City Manager had brought up the one parcel that is going to be zoned high density south of the college that you would be willing to do something specific with that and would he please explain.

Mr. Pitassi said it was suggested by staff that would they be willing to agree to limit use on that parcel for market rate senior housing and the answer is yes, they would and as they have read the staff report and the proposed language of the zoning regulation, there is nothing in that language that would require or not allow that. If the question is would they be willing to agree to that, the answer is yes and quite candidly that parcel is a part of a very large specific plan that will be looked at on its own merit and land uses will be allocated in a variety of ways that will come before the Council in a Specific Plan and it may or may not include higher density senior housing on that particular piece of that parcel. Their current proposed Specific Plan proposes half acre lots for the most part in that area so all of this is subject to discussion. Their initial proposal is in review at the moment and there will be a number of revised proposals that come in over the next year so that is all on the table and as they have from the beginning they are willing to work with the City on what is right ultimately, not only for themselves, but for the community.

Councilman Peterson said he thought it was important that the people do know that rather than having the image of three-story high density out south of the college that perhaps the image in the minds of the people can change to some very nice high density condominiums for seniors. It is just a different image that he would like people to see and at least consider.

Charles Hough, resident of Banning (*See Exhibit B*)

Rick Pippenger, resident of Banning

Sue Palmer, resident of Banning

Paul Lewis, resident of Banning, (*See Exhibit B*)

Frank Mott, resident of Banning

Jim Ploil, resident of Banning

Ann Price, resident of Banning

Henry Diaz, resident of Banning

Alejandro Cassadas, Banning School Board Member

Fred Sakurai, resident of Banning

Linda Pippenger, resident of Banning

Jim Price, resident of Banning

Ellen Carr, resident of Banning

Marie Calderon, City Clerk, said the City received 8 letters on Monday, July 22, 2013 speaking against the high density zoning. The letters were distributed to the City Council (*These letters*

have been added as exhibit C to the minutes). She also said the Banning Unified School District submitted a letter speaking against the rezone (*This letter has been added as exhibit D*).

Mayor Franklin seeing no further comments closed the item for public comment.

Director Abu Bakar displayed the map and explained that the parcel south of the high school and KOA Campground has been removed. The parcels located to the east of Dysart Park on Lovell Street are also removed. Zai said the parcels on the map numbered 20, 21, 29 and 30 are removed.

John Douglas, Housing Consultant, addressed some of the issues and concerns mentioned during the public comment section and also answered questions regarding the process of the rezone and the how the areas in the rezone were decided on. He explained why certain properties could not be used.

Councilman Peterson said so what you are saying is that this proposal by Don Smith of upping the number per acre from 20 to 24 or 18 to 24 cannot be done.

Mr. Douglas said it can be done but it would not satisfy our problem as far as the State goes. He said that one of the speakers talked about the General Plan process that happened back 6 to 8 years ago and the law changed around 2004 and this is when this magic number of 20 units per acre got put into State law. He remembers working through that process back at that time and there was a lot of confusion over what that really meant and what the State was really going to require and here we are 6 to 7 years later and now it is clear what the State is requiring but after the law was passed in 2004 he can say that he is not surprised that the Council that was sitting where you are back when the General Plan was going through didn't realize that this is where the city was going to be today because it was a new law and the dust didn't settle yet in terms of what the implications of that new law were.

Councilmember Peterson expressed his concern of losing valuable property and asked if unit 1 (*refer to the "Alternative Sites Map" of Exhibit A*) could be relocated.

Mr. Douglas said it could be done, but it would not be done before the deadline.

Council expressed their frustration regarding the mandate but why it must be approved. They also discussed how to improve the noticing process and having more meetings in the future.

Motion Welch/Miller to approve Resolution No. 2013-75, approving General Plan Amendment #13-2504 finding that the Initial Study/Mitigated Negative Declaration satisfies the requirements of CEQA, and adopting the 2008-2013 Housing Element, with deletion of the 2 VHDR sites (APNS 537-190-020 and 537-190-021). Motion carried with Councilmember Peterson voting no.

Mayor Franklin asked the City Clerk to read the title of Ordinance No. 1466. City Clerk read: Ordinance No. 1466 an Ordinance of the City Council of the City of Banning, approving Zone Change No. 13-3502 in conformance with program 1-2 of the Housing Element, with deletion of 2 VHDR sites (APNS 537-190-020 and 537-190-021).

Motion Welch/Miller to waive further reading of Ordinance No. 1466. Motion carried Councilmember Peterson voting no.

Motion Welch/Miller that Ordinance No. 1466 pass its first reading. Motion carried with Councilmember Peterson voting no.

The above results are the outcome of a revote; during the original vote there was confusion on what was being voted on.

Motion Welch/Miller to authorize the City Manager to make minor technical corrections to the Housing Element during the State's review for certification. Motion carried with Councilmember Peterson voting no.

Motion Welch/Miller to continue looking for substitute locations of the high density rezone. Motion carried, all in favor.

Meeting recessed at 7:44 p.m. and reconvened at 8:00 p.m.

PUBLIC HEARING: (Cont.)

2. Zone Text Amendment No. 13-97502 related to the adoption of the 2008-2013 Housing Element.
(Staff Report – John Douglas, Housing Element Consultant)

Director Abu Bakar introduced John Douglas, the Housing Element Consultant to give the staff report.

Mr. Douglas explained the items regarding this amendment relates to special needs housing and is driven by State mandates. The State requires cities to identify a zoning district where permanent emergency shelters can be established. It is proposed that the General Plan Housing Element be amended to reflect the airport industrial zone as the emergency zone. It is also requested the City regulate transitional and supportive housing as residential use; that anywhere agriculture is permitted to allow small farmworker housing complexes subject to a permit from the State; and to allow a small reduction in the parking ratio for extremely low income units.

Councilmember Miller asked Mr. Douglas to specify where the zoning is.

Mr. Douglas explained the airport industrial zone would be rezoned to the emergency zone. The transitional and supportive housing, farmworker housing and parking requirements would be regulations added to the current zoning.

Councilmember Peterson asked if transitional and supportive housing effected group homes. Mr. Douglas said this change would not affect the ability to regulate group homes.

Mayor Franklin reiterated that this is State mandated and must be included in the Housing Element that will be submitted to the state. Mr. Douglas said that is correct.

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

Mayor Franklin asked the City Clerk to read the title of Ordinance No. 1466. City Clerk read: An Ordinance of the City Council of the City of Banning, California Amending Title 17 of the Banning Municipal Code in Conformance with the General Plan Housing Element (Zone Text Amendment NO. 13-97502).

Motion Peterson/Miller to waive further reading of Ordinance No. 1467. Motion carried, all in favor.

Motion Peterson/Miller that Ordinance No. 1467 pass its first reading. Motion carried, all in favor.

CONSENT ITEMS

Consent Items 4, 6 & 7 were pulled by the City Council for discussion.

1. Approval of Minutes – Special Meeting – 07/09/13 (Closed Session)

Recommendation: That the minutes of special meeting of July 9, 2013 be approved.

2. Approval of Minutes – Regular Meeting – 07/09/13

Recommendation: That the minutes of regular meeting of July 9, 2013 be approved.

3. Police Officer Fees for Security during the 2013 Playhouse Bowl Evening in the Park Concert Series Beginning August 1, 2013 at the Repplier Park Bowl.

Recommendation: That the City Council review the request from the Banning Playhouse Bowl Association for approval of two police officers to be present between the hours of 6:30-9:30PM for each of the five concerts during the Playhouse Bowl Evenings in the Park Concert Series.

5. Resolution No. 2013-76, Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for the Gilman Home Channel Lateral A, and Improvements to Existing Gilman Home Channel.

Recommendation: That the City Council adopt Resolution No. 2013-76 and authorize the Mayor to execute the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District.

8. Resolution No. 2013-62, Authorizing the City Manager to Execute and Send Letters of Support or Opposition Consistent with Goals Adopted by the City Council.

Recommendation: That the City Council approve Resolution No. 2013-79, authorizing the submittal of the FY 2013/14 Local Transportation Fund (LTF) in the amount of \$1,293,675.00 and approving the FY 2013/14 – 2014/15 Short Range Transit Plan (SRTP).

Motion Welch/Peterson to approve Consent Items 1-3, 5 & 8. Mayor Franklin opened the item for public comments. There were none. Motion carried, all in favor.

4. Authorize Staff to Prepare a Request for Qualifications (RFQ) and Then Solicit Statement of Qualifications and Experience from Consulting Firms to Provide Professional Airport Planning, Environmental, Engineering and Construction Management Services for Banning Municipal Airport.
(Staff Report – Duane Burk, Public Works Director)

Director Burk said the contract with the engineering consultants we currently use is expiring and the Federal Aviation Administration (FAA) requires we submit an RFQ (Request for Qualifications) for these services in the future. The current engineers are allowed to bid on it but are not guaranteed the renewal.

There was discussion to clarify the timeline this request was given and when exactly it is due. City Manager explained there is no money involved in this request. This is not the decision as to who will be awarded the contract just a request to prepare the RFQ.

Councilmember Miller requested that a study session to update/educate Council on the airport be scheduled before voting on items relating to the airport.

Councilmember Miller made a motion to table Consent Item No. 4 until after a workshop educating Council on the airport. Councilmember Welch seconded the motion.

Councilmember Peterson made a substitute motion to approve Consent Item No. 4. Councilmember Welch seconded the motion.

Motion Peterson/Welch to accept the substitute motion called by Councilmember Peterson. Motion carried, with Councilmember Miller voting no.

Motion Peterson/Welch to approve Consent Item No. 4. Motion carried, with Councilmember Miller voting no. The approval of this motion negates the original motion made by Councilmember Miller.

6. Resolution No. 2013-77, Awarding the Contracts for Federal Aviation Administration Airport Improvement Project No. 3-06-0018 AIP 12, Relocate Taxiway "A" Phase I, Relocate Fuel Facility and Approving the Grant Agreement from the Federal Aviation Administration.

Director Burk said this project is part of the master plan and they have been working on this project for 2 years. The taxiway is not in conformance with today's standards for general aviation because it is too close to the fuel facility and that is why we plan to relocate the fuel facility. The project has already been out to bid and it is requested to award the contracts for this project. He explained that grants are awarded annually by the Federal Aviation Administration and this is the timeline when they award grants.

There was discussion regarding the concern of accepting the grant money before there is a workshop educating the Council on the airport and discussing whether or not to keep the airport.

Director Burk explained the potential economic benefits and the existing safety issues at the airport that need to be addressed.

Mayor Franklin asked would it be better to wait to approve Item No. 6 until after the California Department of Transportation awards us the grant as requested in Item No. 7.

Director Burk said we have the money in the budget for the project and the Department of Transportation would highly recommend the funds for this project. He said Items No. 6 & 7 go hand in hand and he can't have one without the other.

Mayor Franklin said if this is not approved tonight then we lose the grant. Director Burk said that is correct.

Mayor Franklin opened the item for public comments.

Don Smith, a Banning Resident, addressed the Council and said we are told the current location of our taxiway and fuel station are dangerous and it will be expensive if there is an accident. Waiting to go forward with this project could be detrimental.

City Attorney agreed with Mr. Smith's statement and reiterated that there is a safety concern that would be remedied by the approval of this project.

7. Resolution No. 2013-78, Authorizing the Submittal of an Application, Acceptance of an Allocation of Funds and Execution of a Grant Agreement with the California Department of Transportation for an Airport Improvement Program Matching Grant.

Since Items No. 6 & 7 are directly related and the Council feels they had all their questions answered, these two items were voted on together.

Motion Peterson/Miller to approve Consent Item No. 6 and 7. Mayor Franklin opened the item for public comments. There were none. **Motion carried, all in favor.**

REPORTS OF OFFICERS

1. Resolution No. 2013-62, Authorizing the City Manager to Execute and Send letters of Support or Opposition Consistent with Goals Adopted by the City Council.

Due to a lack in time, this item will be rescheduled on a later agenda.

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

City Council –

Councilmember Welch –

- Councilmember Welch said he will be leaving town on vacation to see his new great grandson.

Mayor Franklin –

- Announced that all Water Taskforce meetings will be reported out so the public and the rest of the Council are aware of what is going on. The meetings have been moved from mornings to evenings and the next meeting will be in August at 7:00 p.m.

Report by City Manager –

- The Kabul Tour will take place here at City Hall on Thursday, to learn how the City is run, if any of the Council is available to attend.
- Vector Control is taking care of the West Nile Virus scare by spraying ponds and other areas of concern.

ITEMS FOR FUTURE AGENDAS

New Items –

1. Councilmember Miller requested a report on possible changes on the high density zoning that was adopted tonight.
2. Councilmember Peterson requested a rezone on 981 Charles St. be done to reflect residential zoning.
3. Mayor Franklin requested the process in how commissioners are appointed be amended. *(Workshop)*

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials *(Sept./Oct.)*
2. Consideration of an “in-house” attorney vs. contract
 - Councilmember Peterson requested this item be removed.
 - Councilmember Miller said he would like to consider a change of attorney within the same law firm.
3. Let’s Move – Healthy Initiative
4. Giving City Manager authority to write letters to the State Legislature regarding urgency matters

ADJOURNMENT

By common consent the meeting adjourned in memory of John Domas at 9:02 p.m.

Prepared By:

Jessica Hicks, Deputy 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.

Regular City Council Meeting

7/23/2013

Exhibit "A"



City of Banning
2008-2013 Housing Element Update

City Council
 Public Hearing
 July 23, 2013



Background

Purpose of the hearing:

- Review & approve 2008-2013 Housing Element
- Adopt Land Use Element and zoning amendments to allow higher-density housing as required by state law

NOT on tonight's agenda & NOT a public hearing on:

- Rancho San Geronio Specific Plan



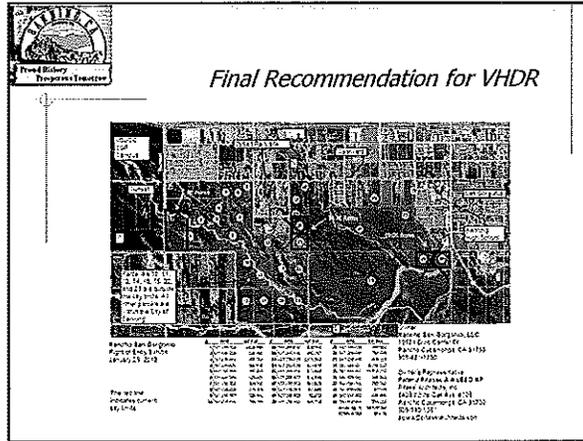
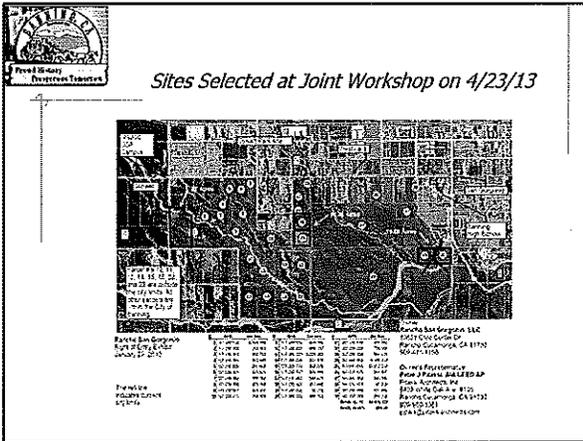
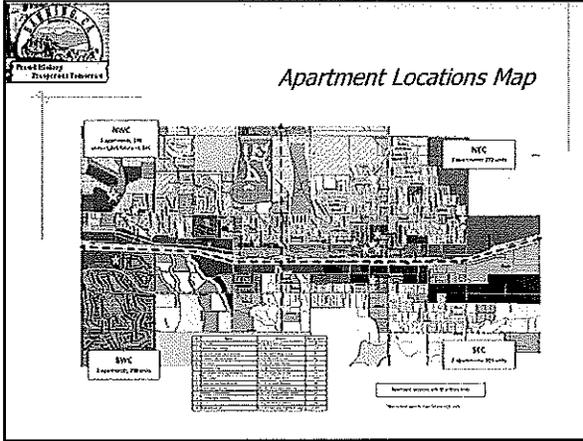
Background

- 2008 through 2013 – preparation of draft Housing Element and consultation with State HCD
- HCD determined that City has insufficient land zoned for development at 20+ units/acre required by state law
- The Housing Element and zoning amendments balance the desires of our community with the state mandate
- The proposed actions would bring the City into compliance with State law.



Potential Consequences

- Carryover of the current RHNA requirement resulting in the need to rezone for 1,465 additional high-density units in 2014. Total high-density units required for 2014-2021 Housing Element would increase to **3,544**
- Potential litigation and loss of land use control
- Loss of eligibility for grant funds





Recommendations

- ◆ That the City Council adopt Resolution No. 2013-75, approving General Plan Amendment #13-2504 finding that the Initial Study/Mitigated Negative Declaration satisfies the requirements of CEQA, and adopting the 2008-2013 Housing Element, with deletion of the 2 VHDR sites (APNS 537-190-020 and 537-190-021)
- ◆ That the City Council introduce Ordinance No. 1466 approving Zone Change No. 13-3502 in conformance with Program 1-2 of the Housing Element, with deletion of 2 VHDR sites (APNS 537-190-020 and 537-190-021).
- ◆ That the Council authorize the City Manager to make minor technical corrections to the Housing Element during the State's review for certification.



End of Presentation

Regular City Council Meeting

7/23/2013

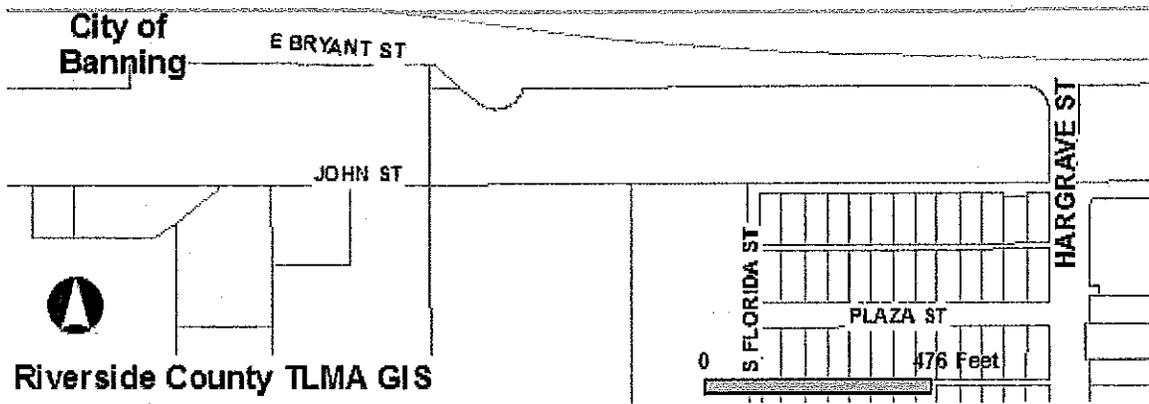
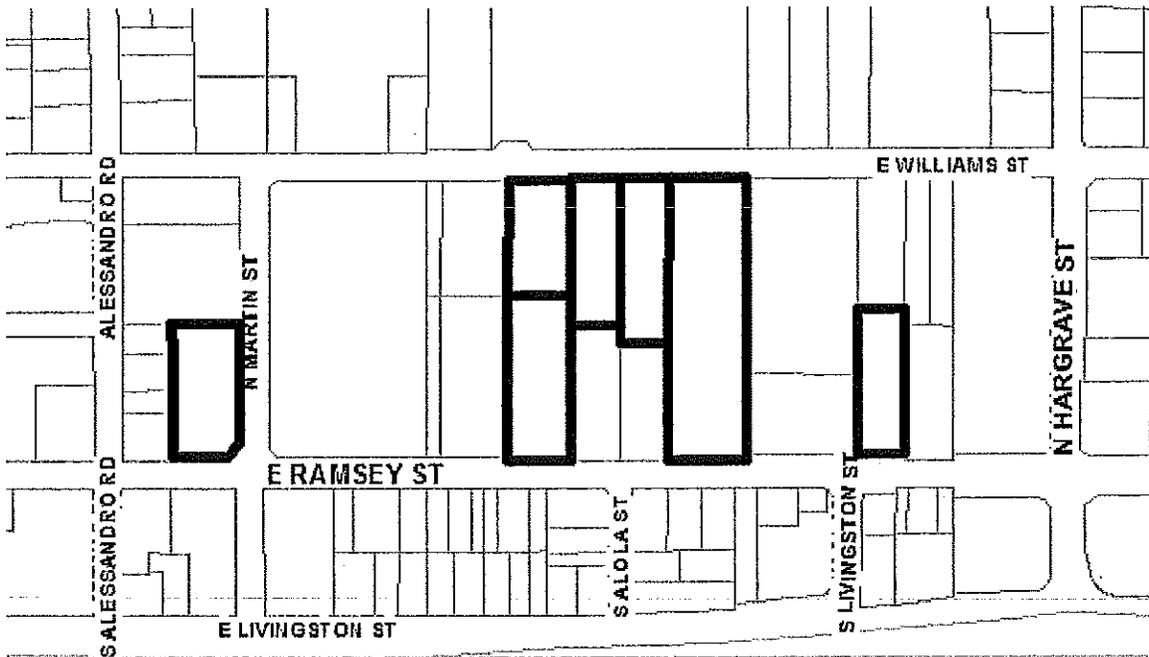
Exhibit "B"

Revised CC mtg
7/23/13
Don Smith

APN	Parcel Size	Current Capacity	Proposed @ 20	Proposed @ 24
537-120-034	21.12	380	422	506
540-083-002	3.02	54	60	72
541-110-013	1.73	31	34	41
532-080-004	55.8	1004	1116	1339
419-140-059	3.31	59	66	79
534-161-010	0.9	16	18	21
537-110-008	9.75	175	195	234
541-110-009	1.58	28	31	37
		<u>1747</u>	<u>1942</u>	<u>2329</u>
541-145-012	0.8	13	16	19
541-150-004	1.3	20	25	31
541-150-010	2.2	34	43	52
541-150-027	0.71	0	0	17
541-150-006	0.71	0	0	17
541-150-008	0.79	0	0	18
541-150-013	0.7	0	0	16
		<u>67</u>	<u>84</u>	<u>170</u>

Total		1814	2026	2499
Amount required				<u>2079</u>
Excess Units over requirement				420

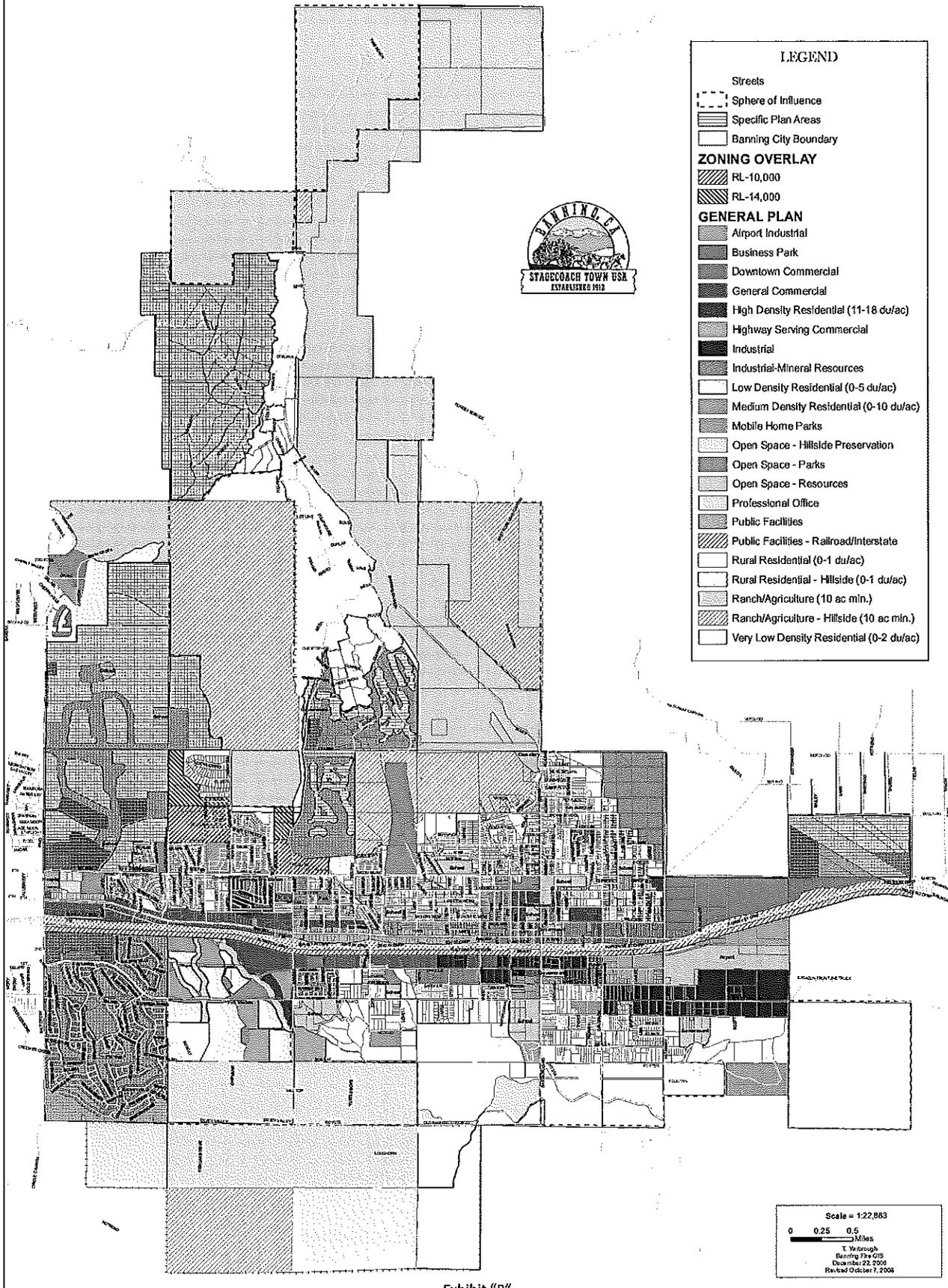
***** Does not include 5 acres of land across from city hall, 3 lots at SW corner of Livingston and Ramsey owned in common, excess land at court house not sold to state, or land at Hargrave and Ramsey which would add to the potential units if added



City of Banning

Riverside County TLMA GIS

CITY OF BANNING GENERAL PLAN WITH ZONING OVERLAY



- LEGEND**
- Streets
 - Sphere of Influence
 - Specific Plan Areas
 - Banning City Boundary
 - ZONING OVERLAY**
 - RL-10,000
 - RL-14,000
 - GENERAL PLAN**
 - Airport Industrial
 - Business Park
 - Downtown Commercial
 - General Commercial
 - High Density Residential (11-18 du/ac)
 - Highway Serving Commercial
 - Industrial
 - Industrial-Mineral Resources
 - Low Density Residential (0-5 du/ac)
 - Medium Density Residential (0-10 du/ac)
 - Mobile Home Parks
 - Open Space - Hillside Preservation
 - Open Space - Parks
 - Open Space - Resources
 - Professional Office
 - Public Facilities
 - Public Facilities - Railroad/Interstate
 - Rural Residential (0-1 du/ac)
 - Rural Residential - Hillside (0-1 du/ac)
 - Ranch/Agriculture (10 ac min.)
 - Ranch/Agriculture - Hillside (10 ac min.)
 - Very Low Density Residential (0-2 du/ac)

Scale = 1:22,863
 0 0.25 0.5 Miles
 T. Yarbrough
 Banning Fire GIS
 December 22, 2009
 Revised October 7, 2008

Exhibit "B"

31

Rec'd CC mtg
7-23-13
mac

Inge Schuler
1030 W Westward Avenue
Banning, CA 92220

Banning City Council
City of Banning
99 E Ramsey
Banning, CA 92220

23 July 2013

I should like to encourage you to exercise greater transparency in presenting changes of enormous magnitude like tonight's Resolution 2013-75 and Ordinance 1466 are to be voted. The timeline starting on page 99 of your packet is misleading and incomplete. First notice of any density changes, to 30 d/u per acre, proposed for about 75 acres in the SW quadrant of Banning was mailed to adjoining residents of the various scattered parcels on April 19, 2012, and then presented at Planning Commission on May 2, 2012; I had previously voiced my concerns at a City Council meeting on April 24, 2012. There was much opposition to this plan and a requested Community Forum was scheduled on November 14, 2012 at the gated community of Serrano del Vista, with an obscure interior address and the gates closed. A request for further community/town hall meetings for other affected neighborhood remained unanswered by staff. Surprise effect of the Community Forum – the 75 acre project was quietly abandoned because the "residents of Serrano del Vista did not like it" (Zai). Instead, a new scheme was hatched and presented in detail at the April 9, and 23, 2013 workshops, scheduled for 3 P.M. when there would be limited participation from the citizenry. On April 23, I was the only resident in the audience. A total of approximately 45 acres of VHDR was still exclusively located in the SW quadrant, south of W Westward Avenue, with the N-S quadrant dividing line now moved from San Gorgonio Avenue to Fourth Street, effectively moving the MF dwellings located across from the high school out of the SW quadrant. The recurring justifying comment from the Community Development Director was that this move to the middle of open undeveloped land " was making a lot of sense to the developer," creating the impression that this just a done deal before the developer has even presented his project to the governing body.

Instead of openness and transparency, there is an institutional practice of secrecy and obfuscation. Staff who, after all, are paid their salaries by the taxpayers see the residents as the adversary instead of engaging them in the ongoing discussion of major changes affecting the fabric of the community. Engagement is discouraged in the first place and then the residents are blamed for apathy.

Repeatedly, staff has been presented, especially by Don Smith and Richard Krick, with alternative parcels and locations to fulfill the State of California's unfunded mandate for this housing element. But it was never "convenient or too time consuming" to follow through on this. I and others had addressed the Planning Commissioners at the 3 July 2013 meeting and voiced our objections.(pp 105ff of your packet)

The argument will be at last, that the developer has spent millions to further his design/vision for Banning and therefore must be approved to move forward. I submit, that the aggregate amount of the residents invested in their properties over the years vastly exceeds that amount and trumps the investment of the developer. He took a gamble in this example of casino capitalism and might have had a better chance in Las Vegas.

You should vote this scheme down and explore and select other sites. I am sure other points will be addressed by the members of the audience.

Presentation for Banning City Council Meeting of 7-23-13

I. Housing Element Report Shortcomings

A. Old Data Does Not Reflect Current Conditions

1. According to SCAG, 84% of Banning residents have income at or below "Low Income" (1)
2. The median price for a home in Banning is 17% less than the region (2)
3. The Press Enterprise reported that 71.3% of Banning USD students qualify for free or reduced cost lunches (3)

B. Concentrating VHDR in one Quadrant of the city violates the policy goals of achieving balanced growth (4)

C. Banning needs to borrow from Beaumont's Housing Element stating that "the Quantitative Objective can be less than total housing needs based on available resources" (5)

II Zoning Changes Should Be More Incremental and Reflect the Neighborhood in Which They Take Place

A. Changing from Very Low Density to Very High Density is extreme

B. Objective 4 of the Housing Element states, "ensure that new residential construction is compatible with existing neighborhoods." (6)

C. Very High Density Residential areas need to be close to transportation, goods, and services

II City Resources are not Sufficient for all of the Proposed Developments (including Butterfield, RSG, and the RHNA)

A. Water

1. 42% of Banning's water supply comes from SWP and is at risk (7)
 - a. SWP is providing only 33% of allocated deliveries (8)

2. **Banning's water distribution system is aging and in need of upgrades, but funding is scarce (9)**

a. Water Canyon (10)

B. Waste Water

1. **Capacity Design 3.6 MGD (11)**

2. **Current Use 3.35 MGD (12)**

3. **RHNA Addition of 864,000 GD = 4.2 MGD**

C. Public Safety

1. **Police**

a. Loss of 4 officers due to budget constraints (13)

b. 27 officers cover 27 sq. mi.; 1 officer for 1,074 people (14)

c. 84% increase in vehicle theft this year (15)

2. **Fire**

a. Only 2 fire engines for the entire city! (16)

i. 1 is stationed in Beaumont

ii. None are stationed South of the freeway

D. Revenue

1. **FY 2012 had \$467K deficit (17)**

2. **\$1.4 million in redevelopment funds no longer available due to State action (18)**

3. **"Operational funds are still struggling" (19) *solution is to raise fees on people already struggling to make ends meet***

4. **39.3% decrease in retail sales (20)**

References

- (1) Profile of the City of Banning (Southern California Assn. of Governments) p10
- (2) Profile of the City of Banning (Southern California Assn. of Governments) p15
- (3) pe.com/local-news/politics/jim-miller-headlines/21130514-school-funding-different-in...
- (4) Banning Housing Program Section 2 Required Findings, Finding #3
- (5) Beaumont Housing Strategy Section 2 page 12 (ci.beaumont.ca.us)
- (6) Banning Housing Program Section 4
- (7) RFC Water and Wastewater Rate Study Report, Table II-2
- (8) [Yubanet.com/California/State Water Project/March 22, 2003](http://Yubanet.com/California/State%20Water%20Project/March%2022,%202003)
- (9),(10) City of Banning Capital Water Projects 2011-2015, City of Banning Strategic Plan Q-3
- (11),(12) RFC Water and Wastewater Rate Study Report, Section III-A, Table III-2
- (13) City of Banning FY 2014 Budget ([ci.banning.ca.us/document center/view/2424](http://ci.banning.ca.us/document%20center/view/2424))
- (14),(15) City of Banning Police web site
- (16) City of Banning Fire Website
- (17-19) City of Banning FY 2012 Budget ([ci.banning.ca.us/document center/view/865](http://ci.banning.ca.us/document%20center/view/865))
- (20) Profile of the City of Banning (Southern California Assn. of Governments) p17

Rev'd C mtg
7/23/13
Charles Hough

Presentation on rezoning

directly impacted by development
on Sunset

Esteemed council members. My name is Charles Hough and I reside in Serrano del Vista at 2649 Winter Ct Banning. Before I begin, I would like to establish with you as axiomatic that those of us in the public who take this microphone are not necessarily less informed or less intelligent and therefore less significant in this discussion simply by not being board members or paid city staff. Thank you.

We the public will directly and personally endure the result of ill conceived zoning changes in our own back yards, including loss of our neighborhood's personality and integrity, and we will suffer the stressed infrastructure, which we will undoubtedly be taxed and have bonds floated to pay for. Then there is congestion which is an euphemism for traffic and parking problems, noise, vandalism and crime;...and all of that, even if the cross section of residents doesn't change from the present **ratio** of per capita criminal activity. The "elephant in the room" of course is... that it will. Anyone with a back yard bird feeder knows you attract what you provide for.

In the rezoning matter before you, I ~~am going to assume~~ that you have been told and are under the impression that this is mandated by the state, that the option approved by the planning commission is the only viable alternative, and that you are up against an ultimate and fast approaching deadline. None of this is true; which I will explore in just a moment.

First, however, I seek a paradigm shift away from just rubber stamping without question, simply because a proposal springs from respected internal sources and seems expedient.

Indulge me for a minute with a totally fictional and fanciful scenario. Say that the State has decided that agricultural land instead of high density residential is in jeopardy. A state mandate consequently comes down that all cities must establish an orchard within their boundaries. Now, lets assume that to comply with this "orchard mandate", the Banning Planning Commission decides to rezone and designate for that purpose, logically and expediently, in their minds, the recently cleared San Gregonio Inn land in the center of the city and across from the new court house, **as an orchard.**

Now, if a clearly off-the-wall zoning proposal such as that were to come to your council , I would hope and pray that you would recognize it as such and be able to square your shoulders, judge it on its merits alone, and, in spite of it originating in the very heart of City officialdom; declare it in need of **revision** and send it back with an admonishment to do so. I submit to you that the rezoning ordinance before you is just such an off-the-wall proposal.

In fact, orderly growth, I repeat, orderly growth, not random or leap frog growth, is mandated in the code. Quoting an excerpt from section 65400) "....reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide (now listen because here it comes)...**for orderly growth** and development, preservation and conservation of open-space and natural

resources...etc." This, by the way, is how Beaumont has already complied with and received approval, even with a mandate twice the size of ours, for their plan to overlay and develop parcels near the center of the city and therefore provide access to necessary services which support a higher density population.

Now for some other facts:

1) High density equates to affordable **Not true.** The Planning Commission told us at their hearing that the State equates high density with affordable and therefore their hands are tied. Now quoting directly from the state website, quote "Densities of housing developments do not describe affordability for purposes of crediting units against the jurisdiction's RHNA" (Regional Housing Needs Allocation)

2) Infrastructure requirement Just zoning a parcel for higher density is not adequate to meet the State requirements anyway, and will fail to meet the mandate. Per SB 724 *Inventory of Land Suitable for Residential Development* " quote: "The element must include a general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities.....(further) The element must include sufficient detail to determine whether water delivery systems and sewer treatment capacity is or will be within the planning period, available to the identified sites." etc.

3) The Deadline It is only months away and in part became a crisis due to the completely in my view, if not criminal, at least blatantly negligent, omission of a low income element requirement during the approval of the Pardee development.

Here's how it boils down: We were non compliant at the beginning of the 2008-2014 period and remain so. The most likely result will be continued negotiations and adding delinquent capacity at the beginning of the new period in 2014. Fines and litigation haven't historically been the norm but even when it has come to that, they have seldom *been* exceeded the amount, for instance, that the city is currently being sued for by Chief Purvis or much less than the cost of last years toxic spill cleanup. ie. a reasonable cost of doing business to the City. The State might in fact impose a moratorium on building until the issue is resolved and a number of us would consider that a preferred outcome!

I sincerely hope you find some of my argument has validity and consider it seriously in making your decision.

I also puzzle over why the developer of this land was tossed what I estimate to be a \$2 million bone (by doubling the value of the land) without any concessions such as; parks, day care, right of way, sewer build out, undergrounding utilities or something similar. *and Jack (what makes anyone think a landowner once zoned for high density) would give it back up.*
In the real world, just approving the zoning as presented and then swapping it at a later date for expediency is not realistic and should not be argued to ease this exercise in poor judgment. Lasting scars on the community will result if this is approved and as we used to say in the 60's....That's real bad karma man.

Rec'd CC Mtg
7/23/13
Paul Lewis

Councilmen, Mayor Franklin:

Allow me to summarize the situation as I see it. First, there is a developer who is not from here who has purchased land in Banning that can be comfortably described as rural horse property for the purpose of creating very high density, very low-income housing projects. This developer has put forth a very artful design that on paper looks quite pleasing. This artful design does not though show what these very high density, low-income housing projects are going to look like or how they are going to impact Banning.

The city, for its part, is viewing these very high density, very low-income housing projects as a God-send due to its failure in the past to be responsive to state requirements in a timely fashion regarding Regional Housing Needs Assessments. If the city passes the proposed items before it, these changes will solve what appears to be pressing demands from the state. It will also most assuredly expose itself to relentless, wasteful and damaging litigation from its own citizens.

So let's consider what is being proposed here. We are talking about creating a whole new density classification for the benefit of a single developer. That is rash and it sets a very poor precedent. The State of California's Department of Housing and Community Development is not going to draw and quarter Banning if it is late on getting a viable, workable and most importantly agreeable housing development plan presented, especially if it is being proactive in seeking solutions that work for the community.

I think it is unfair to expect the limited amount of staff the city has to create this plan out of thin air, especially in light of all their other responsibilities. I think this is also beyond the scope of the Planning Commission, as its purpose is not to develop plans but to simply decide whether the ones being considered meet the requirements based on code.

Now, before you is a rather august body of Banning residents who are here because of a very real concern as to how the measures before you are going to impact the quality of their lives, their neighborhoods, the local south-of-Banning wildlife habitats and to be honest, their property values. They are what we in the old days called "motivated". It is not that they are adverse to development, but they feel, rightly I might add, that what is being proposed here isn't, well, rightly.

So here's a very simple solution to what appears to be a rather complex problem.

- 1.) Table this item.
- 2.) Call for volunteers and impanel a committee to address this.
- 3.) Appoint a representative selection of residents from across the city, plus alternates, plus someone each from law enforcement, fire, utilities and so forth, plus a GIS person to fiddle with the maps, and even this developer since they do seem to have a rather large scheme in mind, to the committee.
- 4.) Appoint a couple of chair-people.
- 5.) Have them meet on Saturday mornings and just supply them with a place to gather. They can bring their own coffee and donuts.
- 6.) Put a time limit on them, say three months.

- 7.) Have them send two representatives to this body to report on their progress every time the council meets.
- 8.) Let them run what they've come up with past city staff to make sure it's kosher.
- 9.) Also let them know that if they screw it up you'll raise this here tabled item and vote on it in a way they most certainly will not like.
- 10.) Once they get you a working, viable plan throw a party. When it all gets said and done give everyone a certificate of appreciation.
- 11.) Buy a plaque. Put the names of everyone involved on that plaque and hang it in the foyer so everyone in perpetuity will know what a bang-up job they did.
- 12.) Call the local news outlets so they cover the plaqueing.
- 13.) Give the developer an award for being the best developer the city has known since Ransom B. Moore. Hell, call it the Moore Better Banning Award.

This way the developer gets their development, the city makes the state happy and the citizen get to know what is being built, how, where and why. If the developer choses not to participate, then that's fine too. It doesn't take away from the job the city needs done as far as the RHNA goes, which the residents should be in charge of anyway.

Councilmen, madam Mayor, this imbroglio is truly a blessing in disguise. It has mobilized the residents of Banning. We all need to understand that if we have a dream of how we want Banning to be and for Banning to become a certain way, we simply cannot abdicate our responsibility to either elected officials, city staff or worse yet, any outside monied merchant.

Short of a better plan being proposed, I respectfully submit this one. Thank you.

Regular City Council Meeting

7/23/2013

Exhibit "C"

July 22, 2013

TO: Mayor and City Council Members

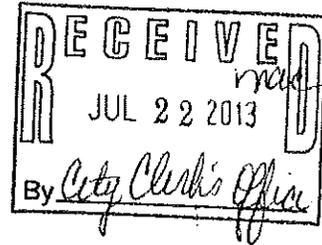
FROM: City Clerk *me*

SUBJECT: Zone Change to Very High Density on South Side of Banning

Attached are letters received today, July 22, 2013 in opposition to the zone change to very high density.

Copy: Community Development Director

Received from Linda Pippenger



18 July 2013

City of Banning City Council
P. O. Box 998
Banning, CA. 9222
Ms. Zai Abu Bakar

Zone change to Banning

Would you please revise your plan for very high density housing? If this is necessary please make small apartments complexes.

It would make absolutely no sense to put thousands of apartment buildings in the same location where thousands of residents would be crowded together. The living conditions would be terrible for these poor people.

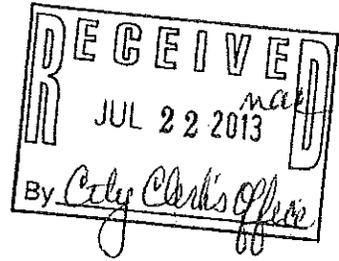
Please make a rational plan and spread these very high density buildings throughout the city in very small lots (2 acres or less.)

Thank you in advance for planning for the good of the city and its residents.

Sincerely,

A handwritten signature in black ink, appearing to be "Edward J. Smith".

butterflychaser1970 @ Yahoo . com



18 July 2013

City of Banning City Council
P. O. Box 998
Banning, CA. 9222
Ms. Zai Abu Bakar

Zone change to Banning

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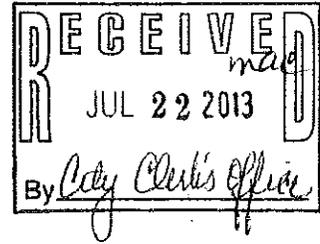
Please make a rational plan and spread these very high density buildings throughout the city in very small lots (2 acres or less.)

Thank you in advance for planning for the good of the city and its residents.

Sincerely,

A large, stylized handwritten signature in black ink.

6177 PEBBLE BEACH DR.
BANNING, CA 92220



July 19, 2013

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

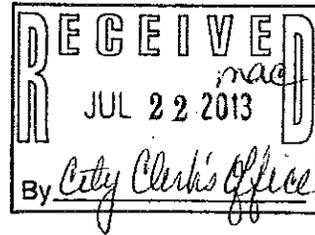
Community Development Director
Ms. Bakar

South Banning High Density

PLEASE do NOT change this area to high density. We do not want more traffic, crime and general congestion to our little, narrow streets.

THANK YOU!

Randy Jordan
1051 N First St
Banning, CA 92220
Email: 12655555@hotmail.com



City Council
Banning, California
99 E. Ramsey Street
Banning, CA. 92220

Re: VDHR units in South Banning

We do not agree with your Community Development Director regarding the huge development that is coming to south Banning.

We understand there will be homes in south Banning, and I am okay with that.

We are NOT okay with 30 apartments per acre. What happened to the very low density that is on the Banning general plan?

Please do not approve this density change. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert and Denise Ingham".

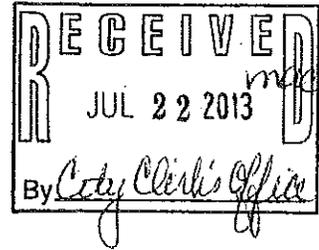
Robert and Denise Ingham
1315 S. Hermosa
Banning, CA. 92220

singham@processcell.com

7/20/2013

July 19, 2013

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



Community Development Director
Ms. Bakar

South Banning High Density

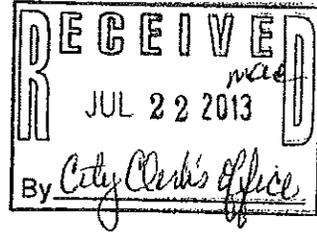
PLEASE do NOT change this area to high density. We do not want more traffic, crime and general congestion to our little, narrow streets.

THANK YOU!

Dawn Henry - 951-961-8210

July 19, 2013

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



Community Development Director
Ms. Bakar

South Banning High Density

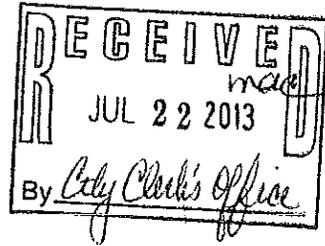
PLEASE do NOT change this area to high density. We do not want more traffic, crime and general congestion to our little, narrow streets.

THANK YOU!

SENATOR WES

1307 N. HARBOR AVE BNG. CA 92220

IF YOU LIVE HERE, YOU COULD FATHOM
THE IMPACT, I AM ALL FOR DEVELOPMENT,
ALBET NEGATIVE.



18 July 2013

City of Banning City Council
P. O. Box 998
Banning, CA. 9222
Ms. Zai Abu Bakar

Zone change to Banning

Would you please revise your plan for very high density housing? If this is necessary please make small apartments complexes.

It would make absolutely no sense to put thousands of apartment buildings in the same location where thousands of residents would be crowded together. The living conditions would be terrible for these poor people.

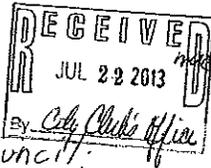
Please make a rational plan and spread these very high density buildings throughout the city in very small lots (2 acres or less.)

Thank you in advance for planning for the good of the city and its residents.

Sincerely,

A handwritten signature in cursive script that reads "Mike Recek".

Mike Recek



7-14-13

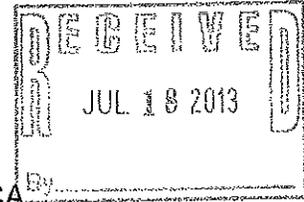
To the Banning City Council:

We have lived in Southwest Banning for almost 33 years and we appreciate very much our rural lifestyle. We like horses, chickens, goats etc. the sounds and even the smells. We enjoy the wildlife such as: Golden eagles, coyotes, many varieties of hawks and other wild birds. We would like the south side of Banning to remain as 1/2 acre lots and are very much opposed to Very High Density zoning 20 units per acre which would change the whole character of Banning.

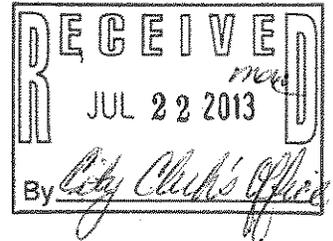
We already have two very large apartment complexes within a 1/2 mile of us and it only seems fair for all that these high density units should be spread out into other areas of our community. Increased traffic, traffic noise, light pollution and loss of quality of life in a rural setting will surely be affected greatly. It makes much more sense to place these units in a more populated area closer to stores and businesses. Therefore we are adamantly opposed to this zone change allowing VHD housing.

Janet Jones
Dorothy Jones

Sincerely
Jim & Linda Jones
South 15th St.



Mr. & Mrs. Bourgeois
Property Address: 1288 Vista Serena, Banning, CA
Mailing Address: 14691 Leon Place, Tustin, CA 92780



7/15/13

Community Development Department
City of Banning
P.O. Box 998
Banning, CA 92220

Re: General Plan Amendment No. 13-2504 and Zone Change 13-3502

We are writing to voice our concerns over this General Plan Amendment and Zone Change referenced above. **Specifically, we object to the rezoning of parcel 534-161-010 to a new High Density Residential-20 zoning, as we believe that this rezoning will negatively impact the community in several ways.**

1. This proposal is unfair to current residents and owners within the community. We, as well as other owners of homes in this neighborhood, made our decision to purchase in this community based on the current zoning and density. This neighborhood is comprised of single family homes and planned condominium developments, and allowing a large block of high-density apartments to be constructed in this mature neighborhood is a drastic degradation of that current zoning and density.
2. The type of high-density zoning proposed for this parcel will depress property values in this neighborhood. The current homeowners have sustained decreases of 30 – 50% in the value of their property over the past 5 years. This high-density zoning for a single parcel within the neighborhood will further depress property values.
3. This type of high-density housing will create an unsustainable atmosphere that will strain existing infrastructure and city services. Roads and schools within this area were designed and constructed for the current density, and the injection of a high-density housing development will overwhelm the existing infrastructure. The reduced property valuation will lead to reduced property tax collections, and stretch the public resources (police, fire, schools, and infrastructure) required to support a higher-density housing development.

To summarize our position, we object to the rezoning of parcel 534-161-010 to a new High Density Residential-20 zoning.

Sincerely,

D. L. Boney *Sue L. Boney*

Regular City Council Meeting

7/23/2013

Exhibit "D"

"Enlightening Young Minds"
Banning
UNIFIED SCHOOL DISTRICT



July 23, 2013

Zai Abu Bakar
Community Development Director
City of Banning
99 E. Ramsey Street
Banning, California 92220

Re: General Plan Amendment and Zone Change establishing High Density Residential

Upon review of the proposed General Plan Amendment and Zone Change, it appears that the District will be highly impacted.

To date, the State has not passed a new School Facility Bond, therefore funding is not available for new growth or modernization projects.

High Density resident projects generate less mitigation fees. The current State School Facility Program is based on matching funds to assist districts in meeting the need to adequately house students. The State has no funds to fund new school projects. Districts with approved projects are awaiting release of funding, but the list of projects exceeds the available funding.

It is in the best interest of the District, that the City reconsiders these proposed changes, especially the very high density residential, which will result in a negative impact to the District's ability to house students.

If you have any questions, please feel free to contact me.

Sincerely,
Robert T. Guillen, Superintendent

A handwritten signature in cursive script, appearing to read "Robert T. Guillen".

Banning Unified School District
951-922-0210

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

08/13/13
SPECIAL MEETING

A special meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Franklin on August 13, 2013 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew J. Takata, City Manager
June Overholt, Administrative Services Director
David J. Aleshire, City Attorney
Melanie Poturica, Attorney - Liebert Cassidy Whitmore
Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney said that both items on the closed session are items of potential litigation pursuant to Government Code Section 54956.9.

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

Meeting went into closed session at 4:02 p.m. and reconvened at 4:48 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:48 p.m.

Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

08/13/2013
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Franklin on August 13, 2013 at 5:05 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
Zai Abu Bakar, Community Development Director
Leonard Purvis, Chief of Police
Fred Mason, Electric Utility Director
Marie A. Calderon, City Clerk

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

REPORT ON CLOSE SESSION

City Attorney stated that there were two items on the agenda both concerning potential litigation. A status report was given on those items and there was no reportable action taken.

PUBLIC COMMENTS/CORRESPONSE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Inge Shuler addressed the Council stating that she and Helen Barnes distribute posters for the Carnival and Stagecoach Days and their area was east on Ramsey from 8th Street to the end of the street where there were no more businesses or private residences and it was an embarrassment. There were bucking sidewalks, plant infestation from the so called goat head weeds, tumbleweeds, curbs and no curbs, and to do this on foot was an enlightenment of sorts. There were abandoned buildings with some boarded up and some not, empty lots weed-choked and full of trash and this is even in the downtown area. She knows that we are pressed for money and can't afford code enforcement but this is an embarrassment and we want to upgrade the east side and bring in businesses. At the Planning Commission meeting last week Cruz Tire wanted to expand and put up a sales place for 18-wheelers and various supplies and by our Code they are required to put up a six foot decorative block wall around their property; what are we

thinking and why would they spend that kind of money in that environment. She has met with Zai Abu Bakar and said she would like to get some citizens involved in going through some of these ordinances that we have on the books that are really not suitable. They would like to go through the ordinances and clean them up and make it flexible enough that people are actually not discouraged when they look at this stuff and then present it to Zai and staff and they can check it for legal things. She knows that the City is short-handed but we need to do something and get the citizens involved. They are willing to help and pitch in but don't turn them down every time they do this.

Bill Lamb, 931 April Lane, and Chairman for Banning Stagecoach Days addressed the Council stating that Stagecoach Days and it is coming up in less than 30 days. He said this is their signature event and it has been going on since 1957 and they are an all-volunteer group, Stagecoach Days Association, that puts on this event and with the assistance of the City of Banning with an in-kind service agreement for the last couple of years which they do appreciate very much and it helps them out tremendously in putting on this event. He went over the many events that will be happening along with more vendors. The Grand Marshall will be Phineas Banning portrayed by Jim Hoffman and he will be riding on the newly restored Gilman Ranch Stagecoach. He said the Council is invited to ride in the parade and cars will be provided. He said that they are looking forward to a great event this year.

James Mildren, 1811 N. San Geronio addressed the Council representing both himself and several of his neighbors regarding a gentleman who has been running a catering business out of his home. Mr. Mildren said that they have been in constant argument with Code Enforcement about this home. This gentleman also has numerous people renting the house and guest quarters which he has been told is legal but the ones that they have the problems with are the people living in the garage and in a camper of which neither has sanitation. The County came onto this property back in January because the lady living in the guest house was on dialysis and the gentleman unplugged her electricity because she was using electric heat and it was costing too much. A place called "the safe" was red-tagged by the County because it was unsafe for human habitation and they pulled the power on it and were told to bring it up to code which has been done and the City has signed off. He also went over the many issues that they have been dealing with in regards to the people living on this property and having to call code enforcement, the police and fire department to deal with problems at this address. There is also another house at the corner of Alessandro and Repplier which they are having problems with. Something needs to be done and that is why he is coming to the Council.

Susan Savolainen, 1610 W. Barbour addressed the Council stating that she wanted to dovetail into what Inge was saying about how they hope the City will look at the citizenry as a benefit to the City and potential ways to help the city improve. She said she has some ideas about how they could fix the problems that they are seeing on the east side and other places in town. She said there are organizations like the Boy Scouts, students that do community service projects as part of their graduation requirements, and service organizations so maybe the City could have "clean-up days" and enlist these students and organizations to help and in that way we are not spending a lot of City funding that we don't have and also get the community more involved in sprucing up the area enough to make people want to move their businesses into town. Like Inge

said it is very embarrassing when the first exit from the freeway from the east drops you into a war zone; it is not very attractive.

Arthur D'Souza owner of Aaron's, 321 Ramsey addressed the Council. He said that they are a business that has come with a certain amount of expertise into Banning and the Pass with three stores of their own back in the Valley. He said their experience here has been very, very positive. They have very luckily fallen into three great organizations: The Banning Chamber of Commerce, the City of Banning, and the Banning Police Department. He said that they have received all types of help from City officials without any name recognition so he would suppose that this is a service provided to everybody that comes in to Banning. As he mentioned, they belong to three cities but again, their experience with this City has been positive. He said that it is their endeavor, as they do better in the city, to not want to hold back in supporting various activities. He said that they have donated to the Pass Baseball Team, BPAL youth activities, Gilman Ranch, the Playhouse Bowl, Nicolet Middle School, Fire Memories Museum, and several church and women's groups. They have another event coming up with Aaron's and the Banning Police Department and Volunteers hosting a Child ID Kit Giveaway Event on Saturday, August 24th between 11 a.m. and 2 p.m. at the store site and this will be for all kids 11 years old and younger. There will be refreshments, door prizes and raffles and live music and police personnel will be present to help the kids fill out their ID kits. He hopes that everyone can attend. He said they would like to help out in any way possible of giving of their personal time, if it is needed and if it is on a holiday, to help beautify Banning because it is also our community.

CORRESPONDENCE: There was none.

CONSENT ITEMS

Mayor Pro Tem Botts said that after consulting with legal counsel his intent is to vote on all three items on the Consent Calendar. He is bringing this up is since he had surgery and was not able to be at the last hearing in regards to the zone text amendment issue. He has been on this Council for a number of years and has been working with staff on this issue as the rest of the Council has and have participated in all the hearings and joint workshops with the Planning Commission and he has heard pro and con through emails and letters and communications on this subject and the only issue was not being able to be in personal attendance at the public hearing. However, he was awake at home watching the public hearing and saw the discourse and the give and take and all the questions and statements by both Council and by the public so based upon that he was advised that it is appropriate that he cast a vote on those issues.

1. Report of Investments for June 2013

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

2. Ordinance No. 1466 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Adopting Zone Change No. 13-3502 to the Zoning Ordinance and Zoning Map in Conformance with the General Plan Housing Element.

Recommendation: That the City Council adopt Ordinance No. 1466.

3. Ordinance No. 1467 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Amending Title 17 of the Banning Municipal Code in Conformance with the General Plan Housing Element (Zone Text Amendment No. 13-97502).

Recommendation: That the City Council adopt Ordinance No. 1467.

Mayor Franklin opened the item for public comments.

Inge Shuler resident of Banning said that she is little bit concerned because she downloaded the packet that is before the Council tonight and she noticed that the minutes from the last meeting were not included and she is very concerned about this because that would enable them to see that any of the changes would actually be implemented. This way we have no way of knowing until the September meeting and the minutes are there for you to vote on. Are the parcels east of the Dysart Park actually removed? There was a proposal that the 26 acre parcel would be opened up to senior housing which means that the old poor folk will be thrown to the boonies which means it has to be wheelchair accessible and if that change was implemented, we don't know. She knows that staff is under a lot of pressure but there isn't that much on the agenda tonight so the minutes could have been include. She has some serious concerns because we have no way of knowing. Again please transparency.

Mayor Franklin closed the item for public comments.

Community Development Director Zai Abu Bakar gave the staff report on this item stating that the two parcels that are located on the east side of Dysart Part were removed. So the only parcel that is included in Item No. 8, the second reading of the ordinance, is that one parcel that is 26 acres.

Mayor Franklin said that this is the parcel that is on Sunset south of the college. Director Zai said that was correct. Mayor Franklin said that was noted as Item No. 8 on the agenda on page 12 and it is shown as the only one that was actually changed and then you also show the parcels that we changed from 18 to 20 acres and those are the only ones that are listed for changes. Director Zai said that was correct.

Mayor Pro Tem Botts said that he wanted to clarify that he thought he saw or watched the two parcels by the high school removed. Director Zai said that one was removed also. Mayor Franklin clarified that Item No. 8 is the only item and it is the one parcel.

City Manager said that there was a senior question on that as far as that development and if you recall the developer's representative said that he would make it senior but we cannot zone it senior through the zoning ordinance and that is why it won't be in there, if you recall. It should be in the minutes and make sure that it is in there.

Mayor Pro Tem Botts said that he has some comments from some Sun Lakes folks concerned about low and moderate income affordable housing and he wanted to make sure that he thinks he heard everyone saying that this is high density and it is not affordable and that it is market rate.

Director Zai said she wanted to clarify that you are talking about the 26 acres or are you talking in general. Mayor Pro Tem Botts said that he is talking about the plan that is going to the State with all parcels and that this is not affordable housing.

Director Zai said that it is not affordable housing and we are leaving it to whoever wants to come and it is market rate. So we are just having the zoning available and there is no project out there.

Councilmember Miller emphasized that this is a zoning decision and has nothing to do with the development. The development will be evaluated and he would urge everyone to come to the meetings about that development. That is distinctly different from this which is a straight zoning decision.

Motion Welch/Botts to approve Consent Items 1, 2 and 3. Motion carried, all in favor.

Mayor Pro Tem Botts said that as he indicated he watched the hearing from home last time and he was a little taken back by one of our Council Members who thoroughly castigated staff for springing this on the Council at the last minute. He thanked Zai Abu Bakar and staff and the consultants. He just thought it was so uncalled for to castigate staff when in fact, it is the Council and the public that kept pushing this off and pushing this off and rightly so because no one wants this in their backyard and he understands that knowing no one does but every time that staff brought it back there was a packed house that said not in my backyard and Council Members said okay and go back to the drawing boards. He doesn't always agree with staff and we debate and he is sure that they don't always agree with him but to fault them for forcing this on the Council at the last minute is just ludicrous. He wanted the taxpaying public to know that we have a staff that he thinks brought this in a timely fashion.

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

Councilmember Miller --

- Thanked the public for their public comments and appreciates them all coming here. Probably what was said is that we have a large number of people in our community willing to help us and he has said several times that we should have workshops on various problems in the community and he would urge that we arrange workshops so we can discuss the problems that were introduced here, the problems with the east side and how the community and the people interested could help us and workshops in that type of area would be very helpful.

Councilmember Welch --

- Announced that tomorrow the Banning Family Community Health Center which is located on east Ramsey Street is celebrating the National Health Center Week from noon to 2:00 p.m. so if you would like to drop by to see that facility, you certainly would be welcome. The address is 1070 E. Ramsey Street.

Councilmember Botts --

- He thanked each person that came up to talk about volunteerism because that is what really makes a community and he thinks that we all know that the City has been under the gun and had to lay off people and budgets are tight and code enforcement was the first to go and he would

like, as one individual or maybe with support from the Council, to ask the City Manager to consider how the City might take the lead on bringing volunteers together. He thinks that there needs to be a central force to do that and it could be the private sector but maybe the City is a place to do that. Other cities have a place where volunteers can come into city hall and sign up for different things and it is sort of managed through city hall. But you are right we don't have the money and we are not going to have the money for a number of years to do what we really need to do on code enforcement and we need code enforcement volunteers and police volunteers. He would be interested if the other Council feels that might be something we could ask the City Manager to look into sort of being the force of how do we involve 30,000 people or a part of them to help us with code enforcement and all the other issues.

Mayor Franklin shared that they have had young people in the past work on cleanups across the city and we did have Council Members that complained because the City actually paid \$30 dollars to feed them. So it has been very difficult sometimes to get young people to help. We have had young people that have been very willing to help cleanup, we had had churches that have gone out and done volunteer cleanups but it is a little discouraging when the people that are running the City complain because people are giving free time.

Mayor Franklin said that we will actually have that coming up also under pending items.

Mayor Franklin –

- She said that we do have a Regional Water Taskforce for the San Geronio area and they had a meeting last night and looked over what are the regional water basins, as well as, where the different districts are and they were able to see that it is very organized to the east and west of us but we do have a void here in the Pass Area. They are going to continue to have meetings and this is made up of representatives of all the water districts in the cities and the counties, as well as, Morongo. The next committee meetings will be held next Wednesday, August 21st and one committee will be talking about what kind of plan they can put together to hopefully tap into some Proposition 84 funds and then following that meeting there will be another meeting to put together what kind of organization they are going to have for the area. She will continue to keep the Council posted on this. Everybody that serves on this task force is non-paid and they are trying to meet in the evenings so it is open and accessible to the public to be able to participate. The meetings are here at city hall and the next Committee Meeting is September 9th at 6:00 p.m.

ITEMS FOR FUTURE AGENDAS

New Items –

Councilmember Miller said that before he became a Council Member he really thought that the Mayor was basically an honorary position and all the Mayor did was run the meetings and pound the gavel occasionally but being on the Council he recognized that the Mayor actually has a lot of responsibility and represents the City on so many different levels at all the Mayor meetings of all the cities in the area, when a Commission goes to Sacramento it is the Mayor who represents our City, also occasionally the Mayor goes to Washington D.C. to represent our City to Congress to represent what we need for our city. So the Mayor itself is really a very important position

and in the past the standard was that the Mayor was elected by the City Council so that the Council would recognize the person most capable of representing the City and most capable of performing those duties. Recently that was changed due to circumstances that have now been corrected and as a result he believes that we really should go back to the old system of actually having the Council consider who would best represent our City and therefore he asks as a future agenda item that we have a motion to revert back to the original condition of having the Mayor elected by the City Council. He would ask that this be put on the agenda soon either next time or rapidly enough so that it is on the agenda before the decision for the next Mayor.

There was a consensus of the Council to have this on an agenda for a future meeting.

Pending Items – City Council

Mayor Franklin said that in regards to Item No. 6 it is a workshop on how appointments are made to City commissions and committees and what she wanted to add is that we look at advisory boards and it kind of ties in with what was said earlier about more community participation. At one time we actually had a Public Utilities Committee, and Airport Committee and a Police Commission and she would also like to add that we have a citizens review or someone that can work with the Planning Commission to be able to utilize all the people that are willing to volunteer to help our city get better and she would like that all included in Item No. 6.

1. Schedule Meetings with Our State and County Elected Officials *(Sept. /Oct.)*
2. Consideration of change of attorney within the same firm.
3. Let's Move – Healthy Initiative *(Oct. 8)*
4. Workshop Regarding Future of Airport
5. Report on Moving Station 20 back to original firehouse.
6. Workshop on how appointments are made to City Commissions/Committees and attendance requirements.

Report by City Attorney – None at this time.

Report by City Manager

- There will be a Job Fair on September 5, 2013 from 9 a.m. to noon at the Banning Community Center.

Mayor Franklin asked City Manager to comment on what is happening on Lincoln Street and the fame that we had last week here in Banning.

City Manager said that the Gas Company is currently doing pipe testing and they should be wrapping this up soon. He said that they might have been told to leave during the fire and there were other issues. In regards to the fame we had a movie called “Welcome to Me” filming here on east Ramsey at the Logan Liquor Store which is across the new courthouse being built. They also filmed at the Stagecoach Motor Inn located on the further end of east Ramsey Street. They set up on Monday and filmed on both Tuesday and Wednesday.

Councilmember Welch asked about Highway 243. City Manager said that it is still closed due to road damage. He said that the firefighters did a great job in fighting the fire. Most of it was on top of the mountain and the fire that you saw at the bottom was mainly back-burning that the fire department actually did to create a fire gap between the top of the mountain and below. Most of the fires and the smoke you saw were basically from the firefighters doing the back-burning in trying to contain the fire.

Mayor Franklin thanked everyone for coming out tonight and reminded everyone that we do not have another meeting in the month of August and the next meeting will be in September.

ADJOURNMENT

By common consent the meeting adjourned at 5:50 p.m.

Marie A. Calderon, City Clerk

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

CITY COUNCIL AGENDA

Date: September 10, 2013
TO: City Council
FROM: June Overholt, Administrative Services Director
SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of June 2013

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

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of June 2013.

The reports are:

Expenditure approval lists

June 6, 2013	210,068.75	
June 13, 2013	225,551.48	
June 20, 2013	328,718.54	
June 27, 2013	558,960.10	
August 27, 2013	2,260,380.08	(June Month End)

Payroll check registers

June 14, 2013	5,175.28
June 28, 2013	8,783.07

Payroll direct deposits*

June 14, 2013	280,526.43
June 28, 2013	263,194.74

62

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

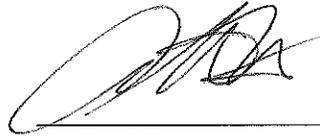
Report Prepared by: Jenna Harrell, Accounts Payable

RECOMMENDED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

CITY of BANNING

Fund/Department Legend

Fund/Department Legend

0001 General Fund Departments

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

All Other Funds

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

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

CITY COUNCIL AGENDA

Date: September 10, 2013
TO: City Council
FROM: June Overholt, Administrative Services Director
SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of July 2013

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

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of July 2013.

The reports are:

Expenditure approval lists

July 2, 2013	927,589.47	
July 15, 2013	7,275.62	
July 18, 2013	1,216,578.16	
July 25, 2013	332,429.50	
August 27, 2013	5,550,832.35	(July Month End)

Payroll check registers

July 12, 2013	10,061.65
July 26, 2013	9,188.52

Payroll direct deposits*

July 12, 2013	339,315.38
July 26, 2013	298,142.29

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

Report Prepared by: Jenna Harrell, Accounts Payable

RECOMMENDED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

CITY of BANNING

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683 – BUA Wastewater Capital Project Fund
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689 – BUA Wastewater Debt Service Fund
690 – Refuse Fund
700 – Risk Management Fund
702 – Fleet Maintenance
703 – Information Systems Services
761 – Utility Billing Administration
805 – Redevelopment Obligation Retirement Fund
810 – Successor Housing Agency
830 – Debt Service Fund
850 – Successor Agency
855 – 2007 TABS Bond Proceeds
856 – 2003 TABS Bond Proceeds
857 – 2003 TABS Bond Proceeds Low/Mod
860 – Project Fund

CITY COUNCIL AGENDA

Date: September 10, 2013

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Notice of Completion for Project No. 2013-01 "Repairs to Water Well M-3"

RECOMMENDATION: That the City Council accepts Project 2013-01 "Repairs to Water Well No. M-3," as complete and direct the City Clerk to record the Notice of Completion.

JUSTIFICATION: Staff has determined that the project has been completed per the City of Banning plans and specifications; therefore the acceptance of the Notice of Completion is appropriate.

BACKGROUND: On April 9, 2013 the City Council/Banning Utility Authority adopted 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."

The scope of work under this project was to make the necessary repairs to Water Well M-3 by installing a new stainless steel cone strainer, installing a new shaft section and couplings, installing new bowls and head shaft, replacing the existing 350 horsepower ("HP") standard efficient motor with a 200 HP premium efficient motor. All of the repairs to Water Well M-3 have been completed in accordance with the City of Banning Standard Specifications,

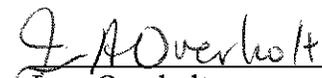
FISCAL DATA: The total contract price for this project is \$96,084.52

REVIEWED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

1 WHEN RECORDED MAIL TO:
2

3 The Office of the City Clerk
4 of the City of Banning
5 P.O. Box 998
6 Banning, California 92220
7

8 FREE RECORDING:
9 Exempt Pursuant to
10 Government Code §6103
11

12
13 NOTICE OF COMPLETION
14 PROJECT NO. 20013-01W
15 REPAIRS TO WATER WELL NO. M-3
16

17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the
18 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of
19 the Civil Code of the State of California, and is hereby accepted by the City of Banning,
20 pursuant to authority conferred by the City Council this September 10, 2013, and the
21 grantees consent to recordation thereof by its duly authorized agent.
22

23 That the OWNER, the City of Banning, and Layne Christensen Company of Redlands,
24 California, the vendee, entered into an agreement dated April 15, 2013, for the repairs of
25 Water Well M-3, covered under Project No. 2013-01W. The scope of work under this
26 project will included the installation of a new stainless steel cone strainer, installation of
27 new shaft sections and couplings, bowls, new head shaft and replacing an existing 350
28 horsepower standard efficient motor with a 200 horsepower premium efficient motor.
29 The repairs to Water Well M-3 were completed all in accordance with the City of
30 Banning Standard Specifications.

31 (1) That the work to Water Well M-3 was completed on August 15, 2013, for
32 Project No. 2013-01W, "Repairs to Water Well No. M-3".

33 (2) That the City of Banning, a municipal corporation, whose address is
34 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work
35 of improvement.

1 (3) That said work of improvement was performed at the Water Well No. M-3
2 located on the north side of Wilson Street, west of Omar Street, Banning, California
3 92220.

4 (4) That the original contractor for said improvement was Layne Christensen
5 Company Plumbing Company, State Contractor's License No. 510011.

6 (5) That Performance and Payment bonds were not required for this project.

7 (6) The nature of interest is in fee.
8

9 Dated: September 10, 2013

10 CITY OF BANNING
11 A Municipal Corporation
12
13
14

15 By _____
16 Andrew J. Takata
17 City Manager
18

19 APPROVED AS TO FORM:
20
21
22

23 _____
24 David J. Aleshire, City Attorney
25 Aleshire & Wynder, LLP
26
27
28
29
30
31
32
33
34

JURAT

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me _____ on
this _____ day of _____, 2013 by _____ proved
to me on this basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public in and for said County
and State

(S e a l)

STATE OF CALIFORNIA)

) ss

COUNTY OF RIVERSIDE)

MARIE A. CALDERON, being duly sworn, deposes and says:

That I am the City Clerk of the City of Banning, which City caused the work to be performed on the real property hereinabove described, and is authorized to execute this Notice of Completion on behalf of said City; that I have read the foregoing Notice and know the contents thereof, and that the facts stated therein are true based upon information available to the City of Banning, and that I make this verification on behalf of said City of Banning. I declare under perjury that the forgoing is true and correct.

Executed on _____, 2013 at Banning, California.

City Clerk of the City of Banning

CITY COUNCIL AGENDA

Date: September 10, 2013
To: Honorable Mayor and City Council
From: Fred Mason, Electric Utility Director
Subject: Resolution No. 2013-74, Awarding the Bid for Project No. 2013-03EL
Downtown Underground Project – Phase 2

RECOMMENDATION: Adopt Resolution No. 2013-74, awarding the bid for the Downtown Underground Project – Phase 2 contract to Southern California West Coast Electric, Inc. (“SCWCE”), of Beaumont, California, in the amount not to exceed \$368,482.00 (Three Hundred Sixty Eight Thousand, Four Hundred Eighty Two Dollars and No Cents) including taxes.

JUSTIFICATION: The conversion of overhead utilities to an underground electric distribution system through the downtown corridor of the City of Banning will reduce the number of aging overhead utility systems and provide beautification throughout the area.

BACKGROUND: In May of 2011, the City of Banning adopted Resolution 2011-33 which called for the establishment of an Underground Utility District. Resolution 2011-33 is a successor to Resolution 2004-120 which stated that all utilities along Ramsey Street shall be underground as part of the City’s beautification program.

Establishing the boundaries of the of the City’s Downtown Underground Distribution system began as a measure to reduce the overconcentration of overhead utilities from the southwest corner of San Gorgonio Avenue and Livingston Street north to Hays Street. The project has since grown to include the entire downtown corridor with the backbone being Ramsey Street, western boundary at Eighth Street, northern boundary at Williams Street, Hargrave Street to the east, and Livingston Street on the south end. The Downtown Underground Project - Phase 2 will be the second of six phases, with an overall construction budget of \$2.4 million. The underground conversion of the downtown distribution system will be completed in conjunction with the Downtown Decorative Lighting Plan (City Council Resolution No. 2012-30), whereas the City of Banning Electric Department personnel will provide efforts for the installation of the decorative lights.

Staff solicited bids for the Downtown Underground Project – Phase 2 and received one bid proposal. The proposal was submitted by:

1. Southern California West Coast Electric, Inc., Beaumont, CA at \$368,482.00

The City of Banning's Electric Utility staff distributed hard copy bid packets to two contractors as well as electronic copies to two plan room consultants, iSQFT and Associated General Contractors of America, for distribution to other eligible contractors. Two contractors, SCWCE and Global Power Group, Inc. attended the mandatory pre-bid meeting held on July 31, 2013.

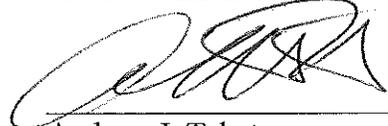
The proposal was evaluated by staff as well as the Electric Department's consultant, SAIC Energy, Environment & Infrastructure LLC, and it was determined that SCWCE's proposal meets the requirements of the City and is the lowest responsible bidder.

FISCAL DATA: Funds for the Downtown Underground Project – Phase 2 contract are available in the Electric Revenue Bond Project Fund Account 674-7000-473-96-29, D.T. Underground Conversion.

RECOMMENDED BY:


Fred Mason
Electric Utility Director

APPROVED BY:


Andrew J. Takata
City Manager

REVIEWED BY:


June Overholt
Deputy City Manager/Administrative Services Director

Prepared by Brandon Robinson

RESOLUTION NO. 2013-74

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AWARDING THE BID FOR THE DOWNTOWN UNDERGROUND PROJECT –
PHASE 2 CONTRACT**

WHEREAS, the City of Banning owns and operates its own Municipal Electric Utility;
and

WHEREAS, it is essential that the City of Banning continues to maintain and upgrade
electric utility systems within the city limits; and

WHEREAS, the City of Banning adopted Resolution 2011-33 which called for the
establishment of an Underground Utility District to reduce the overconcentration of overhead
utilities and provide beautification to the downtown corridor; and

WHEREAS, the City of Banning adopted Resolution 2012-30 which incorporated the
Downtown Decorative Lighting Plan into the phasing of the Downtown Underground Project;
and

WHEREAS, Staff solicited bids and received one bid proposal for the Downtown
Underground Project – Phase 2; and

WHEREAS, Southern California West Coast Electric, Inc. of Beaumont, California is
the lowest responsible bidder as shown on Exhibit “A”.

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

SECTION 1. Adopt Resolution No. 2013-74, approving the bid award, in the amount of
\$368,482.00, for the Downtown Underground Project – Phase 1 contract to Southern California
West Coast Electric, Inc., and authorize the City Manager, or his designee, to execute the
necessary documents to complete said agreement.

SECTION 2. Authorize the Administrative Services Director to complete the necessary
account transfers as required for the completion of said project and to approve change orders
within the 10% contingency of \$36,848.20.

PASSED, ADOPTED AND APPROVED this 10th day of September 2013.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

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

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

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-74 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of September 2013 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

EXHIBIT A

SUMMARY OF BIDS RECEIVED FOR PROJECT NO. 2013-03EL DOWNTOWN
UNDERGROUND PROJECT – PHASE 2

**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

PROJECT NO.: 2013-03EL

DESCRIPTION: DOWNTOWN UNDERGROUND PROJECT -
PHASE 2

BID OPENING DATE: August 15, 2013 **TIME:** 1:30 p.m.

NAME OF BIDDER:	BID BOND			TOTAL BID AMOUNT:
SO. CAL. WEST COAST ELECTRIC, INC. Beaumont, CA				368,482.00

VERIFIED BY:

B. De K. F. [Signature]
[Signature]

CITY COUNCIL AGENDA

Date: September 10, 2013
TO: Honorable Mayor and City Council
FROM: Fred Mason, Electric Utility Director
SUBJECT: Resolution No. 2013-80 Approving the Local Resource Adequacy Capacity Purchase Agreement with Shell Energy North America for Calendar Year 2014

RECOMMENDATION: The City Council approve the local resource adequacy capacity purchase with Shell Energy North America (“Shell”) for calendar year 2014, attached herewith as Exhibit “A”.

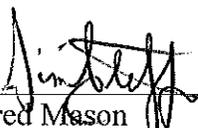
JUSTIFICATION: It is a requirement of all California Independent System Operator (“CAISO”) participants to have a minimum of fifteen percent (15%) capacity reserves. Additionally, the CAISO requires that a specified amount of each participant’s total capacity be from local generating resources, as defined by the CAISO. Banning is a Participating Transmission Owner (“PTO”) with the CAISO.

BACKGROUND: After the California energy crisis the CAISO has been developing market modifications to ensure that all Load Serving Entities (“LSE”) have acquired sufficient electricity / capacity to serve their peak demand. The CAISO has determined that each LSE must maintain capacity reserves of at least 15% above its projected peak demand, and has implemented policy changes to that affect. Additionally, the CAISO requires that a specified amount of each participant’s total capacity be from local generating resources, as defined by the CAISO.

Staff solicited bids from qualified energy marketers for 10 MW of Local Capacity and received three responses. Shell had the lowest responsive bid. Staff recommends approval of the attached agreement by the City Council.

FISCAL DATA: The cost of this transaction is \$3.25/kilowatt month, for a total cost of \$390,000 over the twelve month contract period. Funds have been allocated in the FY 2013-14 Budget to cover the cost of this expense.

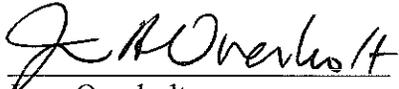
RECOMMENDED BY:


Fred Mason
Electric Utility Director

APPROVED BY:


Andrew J. Takata
City Manager

REVIEWED BY:



June Overholt

Deputy City Manager/Administrative Services Director

Prepared by Jim Steffens

RESOLUTION NO. 2013-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE LOCAL RESOURCE ADEQUACY CAPACITY PURCHASE AGREEMENT WITH SHELL ENERGY NORTH AMERICA FOR CALENDAR YEAR 2014

WHEREAS, the City of Banning owns and operates its Municipal Electric Utility; and

WHEREAS, the City is a Participating Transmission Owner (“PTO”) with the California Independent System Operator (“CAISO”); and

WHEREAS, the CAISO has implemented Resource Adequacy (“RA”) requirements of 115% requiring a minimum of 15% reserves for all Load Serving Entities (“LSE”); and

WHEREAS, the CAISO requires that a specified amount of each participant’s total capacity be from local generating resources, as defined by the CAISO; and

WHEREAS, the City solicited bids from qualified energy marketers for 10 MW of Local Capacity and received three responses. Shell Energy North America had the lowest responsive bid.

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

SECTION 1. Adopt Resolution No. 2013-80 approving the energy capacity agreement between the City of Banning and Shell Energy North America, attached herewith as Exhibit “A” and authorize the City Manager or his designee to execute and administer said agreement.

SECTION 2. Authorize the Mayor to execute Resolution No. 2013-80. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

PASSED, ADOPTED AND APPROVED this 10th day of September 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 and Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-80 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 10th day of September 2013 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit "A"

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
SHELL ENERGY NORTH AMERICA (US), L.P.
AND
CITY OF BANNING**

This confirmation letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US), L.P.** ("Seller") and **City of Banning** ("Buyer"), each individually a "Party" and together the "Parties", dated as of August 12, 2013 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the WSPP Agreement effective as of May 9, 2013, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

**ARTICLE 1
DEFINITIONS**

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO
- 1.4 "Availability Standards" shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Article 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the product of the RA Capacity Flat Price and the Price Shape for such period.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

- 1.13 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.15 "Delivery Period" has the meaning specified in Section ARTICLE 4 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.18 "Firm RA Product" has the meaning specified in the Section 3.2 hereof.
- 1.19 "GADS" means the Generating Availability Data System or its successor.
- 1.20 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.21 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.22 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.23 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.24 "LRA" means Local Regulatory Authority.
- 1.25 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.26 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.
- 1.27 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.28 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.29 "NERC" means the North American Electric Reliability Council, or its successor.
- 1.30 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

- 1.31 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.32 "Non-Availability Charges" are as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.
- 1.33 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.34 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.35 "Price Shape" means the Price Shape specified in the Monthly Payment Price Shape Table in Section 4.9 hereof.
- 1.36 "Product" has the meaning specified in Article 3 hereof.
- 1.37 "RA Availability" means, for each Unit, expressed as a percentage, (a) the Unit's Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit's RA Availability shall not exceed 1.00.
- 1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and LAR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses both the RAR Attributes and LAR Attributes of the capacity provided by a Unit.
- 1.39 "RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.
- 1.40 "RAR" means the resource adequacy requirements, exclusive of LAR established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.41 "RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, LRA, or Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes.
- 1.42 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA having jurisdiction.
- 1.43 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.44 "Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.
- 1.45 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.46 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.47 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.48 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.49 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes or LAR Attributes.

- 1.50 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.51 "Transaction" has the meaning specified in the introductory paragraph hereof.
- 1.52 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.53 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

**ARTICLE 2
UNIT INFORMATION**

Name: Century Generating Plant

Location: SP LA

CAISO Resource ID: CENTRY_6_PL1X4

Unit NQC (as of the Confirmation Effective Date): 36 MW

LAR Attributes (Yes/No): Yes

Resource Type: Combustion Turbine

Resource Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid ("Substation"): Colton Sub to SCE Vista Sub

Path 26 (North, South or None): South

Local Capacity Area (if any, as of Confirmation Effective Date): Los Angeles Basin

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None

Run Hour Restrictions: N/A

**ARTICLE 3
RESOURCE ADEQUACY CAPACITY PRODUCT**

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation: (a) RAR Attributes and, if applicable, LAR Attributes, and (b) be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.2 or 3.3 below ((a) and (b) shall be collectively referred to as the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in

RAR Showings, LAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RAR Attributes or LAR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.3 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If the Units are not available to provide the full amount of the Contract Quantity, then Seller may provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

ARTICLE 4 DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: January 1, 2014 through December 31, 2014, inclusive.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Month	Contract Quantity (MWs)
January 2014	10
February 2014	10
March 2014	10
April 2014	10
May 2014	10
June 2014	10
July 2014	10
August 2014	10
September 2014	10
October 2014	10
November 2014	10
December 2014	10

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than ten (10) Business Days before the relevant deadlines for the corresponding RAR Showings and/or LAR Showings applicable to that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings and/or LAR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

4.5 Alternate Capacity and Replacement Units

If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than ten (10) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings and/or LAR Showings. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than ten (10) Business Days before the applicable RAR Showings or LAR Showings deadlines for each Showing Month, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes and, if applicable, LAR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RAR Attributes and no LAR Attributes, and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes ("Replacement Capacity"). Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the WSPP Agreement, the following damages in lieu of damages specified in Section 4.1 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor

purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY FLAT PRICE TABLE

Contract Year/Month	RA Capacity Flat Price (\$/kW-month)
January 2014	\$3.25
February 2014	\$3.25
March 2014	\$3.25
April 2014	\$3.25
May 2014	\$3.25
June 2014	\$3.25
July 2014	\$3.25
August 2014	\$3.25
September 2014	\$3.25
October 2014	\$3.25
November 2014	\$3.25
December 2014	\$3.25

The respective monthly Price Shape, set forth in the Monthly Payment Price Shape Table below, shall apply throughout the entire Delivery Period.

MONTHLY PAYMENT PRICE SHAPE TABLE

Monthly Delivery Period (or Showing Month)	Price Shape (%)
January 2014	100%
February 2014	100%
March 2014	100%
April 2014	100%
May 2014	100%
June 2014	100%
July 2014	100%
August 2014	100%
September 2014	100%
October 2014	100%
November 2014	100%
December 2014	100%

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the WSPP Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the WSPP Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or

otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5

CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6

RESERVED

ARTICLE 7

OTHER BUYER AND SELLER COVENANTS

- 7.1 Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR and LAR if applicable. Such commercially reasonable actions shall include, without limitation:
- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR and/or LAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR or LAR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR and/or LAR; and
 - (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, so as to maintain the purpose of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings. The Parties acknowledge that the CPUC and CAISO may require reporting of flexible capacity by LSEs during 2014 and Seller shall report the flexible capacity to Buyer for Buyer's purposes of complying with CPUC Rulemaking 11-10-023 and such changes will not result in changes to the rights and

obligation of the Parties under this Confirmation nor will such changes create an obligation for the Parties to negotiate a change in the Product.

- 7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
 - (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR or LAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
 - (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR or LAR, or analogous obligations in any non-CAISO market;
 - (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
 - (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
 - (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, and LAR;
 - (g) If Seller is the owner of any Unit, the aggregation of all amounts of LAR Attributes and RAR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
 - (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR and LAR;
 - (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
 - (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least ten (10) Business Days before the relevant deadline for each RAR or LAR Showing, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
 - (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8

CONFIDENTIALITY

Notwithstanding Section 30.1 of the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR or RAR Showings, if applicable, and Seller may

disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans.

**ARTICLE 9
BUYER'S RE-SALE OF PRODUCT**

Buyer may re-sell all or a portion of the Product hereunder.

**ARTICLE 10
MARKET BASED RATE AUTHORITY**

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

**ARTICLE 11
COLLATERAL REQUIREMENTS**

11.1 Seller Collateral Requirements

Notwithstanding anything to the contrary contained in the WSPP Agreement, Seller shall provide to, and maintain with, Buyer a Full Floating Independent Amount as long as Seller or its Guarantor, if any, does not maintain Credit Ratings of at least BBB- from S&P and of at least Baa3 from Moody's. The Full Floating Independent Amount shall be equal to \$ 0.00.

11.2 Buyer Collateral Requirements

Notwithstanding anything to the contrary contained in the WSPP Agreement, Buyer shall provide to, and maintain with, Seller a Full Floating Independent Amount as long as Buyer or its Guarantor, if any, does not maintain Credit Ratings of at least BBB- from S&P and of at least Baa3 from Moody's. The Full Floating Independent Amount shall be equal to \$ 0.00.

11.3 Current Mark-to-Market Value

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero.

**ARTICLE 12
WSPP AGREEMENT AMENDMENTS**

12.1 WSPP Agreement Amendments: For purposes of this Transaction only, the Master Agreement shall be amended as follows:

- (a) Sections 22.1(d) and 27 of the Master Agreement shall not apply to either Party with respect to this Transaction.
- (b) The following phrase is inserted at the beginning of Section 37: "On the date of entering into this Confirmation,".

- (c) Section 24 of the Master Agreement is deleted and replaced with the following:
- "This Master Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law or contrary provisions of the Master Agreement, if any.
- (d) Subsections 34.1 and 34.2 of the Master Agreement are hereby deleted and replaced with the following:
- 34.1 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT."
- The rest of Section 34 of the Master Agreement shall be re-numbered accordingly.
- (e) LIMITATION OF DAMAGES. FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY FOR THE BREACH SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, SUCH DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.
- (f) Section 41 "Witness" of the Master Agreement shall become Section 42 and the following "Standard of Review" Section substituted in its place:
- "The Parties agree as follows:
- From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:
- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

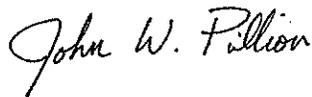
(ii) In addition, and notwithstanding the foregoing subsection (i), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (ii) shall not apply, provided that, consistent with the foregoing subsection (i), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (i).

(iii) The Parties, for themselves and their successors and assigns, (a) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Master Agreement and (b) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard."

ACKNOWLEDGED AND AGREED TO AS OF August 12, 2013:

Shell Energy North America (US), L.P.

City of Banning



By: _____

By: _____

Name: John W. Pillion

Name: _____

Title: Confirmations Team Lead

Title: _____

CITY COUNCIL AGENDA

Date: September 10, 2013

To: Honorable Mayor and City Council

From: Fred Mason, Electric Utility Director

Subject: Resolution No. 2013-81, Awarding the Bid for Project No. 2013-04EL City of Banning Hydroelectric Facility Rehabilitation

RECOMMENDATION: Adopt Resolution No. 2013-81, awarding the bid for the City of Banning Hydroelectric Facility Rehabilitation contract to Charles King Company, Inc. of Signal Hill, California, in the amount not to exceed \$638,500.00 (Six Hundred Thirty Eight Thousand, Five Hundred Dollars and No Cents) including taxes.

JUSTIFICATION: The rehabilitation of the City of Banning's electrical and mechanical components at the Hydroelectric facility is required to ensure that all Federal Energy Regulatory Commission (FERC) permit obligations are met, which requires that the Lower and Middle hydroelectric generator units are functioning as designed.

BACKGROUND: The City of Banning commissioned the hydroelectric generator in 1987 as a 0.5 MW generating facility. The units are placed in the Mias Canyon area of Banning, CA.

The City of Banning Electric Utility Department entered into an agreement with City of Banning Water Department to provide monetary support for needed repairs at the facility as they arise. The Lower and Middle hydroelectric generator units have been non-operational since 2006. FERC has since given the City of Banning a deadline of the year 2012 for the hydro units to become operational and producing energy. As a result, the City of Banning solicited bids for design and construction services required to repair and upgrade the existing electrical and mechanical components of the hydroelectric facility that will enable the generator units to operate effectively, which includes replacement of SCADA control equipment. FERC has extended the aforementioned deadline in exchange for the City of Banning's commitment to ensuring complete functionality of the Lower and Middle hydro units.

Staff solicited bids for the City of Banning Hydroelectric Facility Rehabilitation and received one bid proposal. The proposal was submitted by:

1. Charles King Company, Inc., Signal Hill, CA at \$638,500.00

The City of Banning's Electric Utility staff distributed hard copy bid packets to three contractors as well as electronic copies to two plan room consultants, iSQFT, Reed Construction Data and Associated General Contractors of America, for distribution to other eligible contractors. A requirement for bidders is sufficient experience with the design and/or

rehabilitation of hydroelectric facilities. A list of references and successful projects of this nature must be completed and submitted with each bid. Two contractors, Charles King Company and Electrical Systems Engineering Co. attended the mandatory pre-bid meeting held on July 30, 2013.

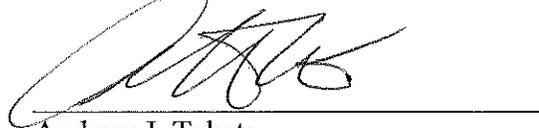
The proposal was evaluated by the Electric and Water Department's staff and it was determined that Charles King Company's proposal meets the requirements of the City and is the lowest responsible bidder.

FISCAL DATA: An appropriation from the Electric Capital Improvement Fund is necessary in order to cover expenses in relation to the design and construction of the City of Banning Hydroelectric Rehabilitation project. An amount of \$600,000.00 is available within the Electric Capital Improvement Fund account 673-7000-473.96-34. Electric Utility Department staff requires an additional appropriation of \$38,500.00 for all expenses related to the City of Banning Hydroelectric Facility Rehabilitation project, and will be transferred to account 673-7000-473.96-34, City of Banning Hydroelectric Facility Rehabilitation.

RECOMMENDED BY:


Fred Mason
Electric Utility Director

APPROVED BY:


Andrew J. Takata
City Manager

REVIEWED BY:


June Overholt
Deputy City Manager/Administrative Services Director

Prepared by Brandon Robinson

RESOLUTION NO. 2013-81

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AWARDING THE BID FOR THE CITY OF BANNING HYDROELECTRIC
FACILITY REHABILITATION CONTRACT**

WHEREAS, the City of Banning owns and operates its own Municipal Electric Utility;
and

WHEREAS, it is essential that the City of Banning continues to maintain and upgrade
electric utility systems within the city limits; and

WHEREAS, the City of Banning is required by the Federal Energy Regulatory
Committee (FERC) to maintain an operational hydroelectric generation facility to be eligible
for permits and licensure; and

WHEREAS, staff solicited bids and received one bid proposal for the City of Banning
Hydroelectric Facility Rehabilitation; and

WHEREAS, Charles King Company, Inc. of Signal Hill, CA is the lowest responsible
bidder as shown on Exhibit "A".

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

SECTION 1. Adopt Resolution No. 2013-81, approving the bid award, in the amount of
\$638,500.00, for the City of Banning Hydroelectric Facility Rehabilitation contract to Charles
King Company, Inc., and authorize the City Manager, or his designee, to execute the necessary
documents to complete said agreement.

SECTION 2. City Council approves appropriation from the Electric Capital Improvement
Fund for Professional Contract Services provided by Charles King Company, Inc. related to the
design and construction of City of Banning Hydroelectric Facility Rehabilitation for an amount
of \$38,500.00.

SECTION 3. Authorize the Administrative Services Director to complete the necessary
account transfers as required for the completion of said project and to approve change orders
within the 10% contingency of \$63,850.00.

PASSED, ADOPTED AND APPROVED this 10th day of September 2013.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

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

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

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-81 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of September 2013 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

EXHIBIT "A"

**SUMMARY OF BIDS RECEIVED FOR PROJECT NO. 2013-04EL
CITY OF BANNING HYDROELECTRIC FACILITY REHABILITATION**

**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

PROJECT NO.: 2013-04EL

DESCRIPTION: CITY OF BANNING HYDROELECTRIC
FACILITY REHABILITATION

BID OPENING DATE: August 13, 2013 **TIME:** 1:30 p.m.

NAME OF BIDDER:	BID BOND	Addendum		TOTAL BID AMOUNT:
CHARLES KING CO. Signal Hill, CA	YES	YES		6238,500.00

VERIFIED BY: *B. D. K. Kiser*
A. H. H.

CITY COUNCIL AGENDA

DATE: September 10, 2013
TO: City Council
FROM: Duane Burk, Director of Public Works
SUBJECT: Resolution No. 2013-82 “Awarding the Construction Contract for Project No. 2013-05, ‘Construction of a New Restroom at City Hall’ and Rejecting All Other Bids”

RECOMMENDATION: Adopt City Council Resolution No. 2013-82:

- I. Awarding the Construction Contract for Project No. 2013-05, “Construction of a New Restroom at City Hall” to Whitmore Construction, Inc., of Banning, California for an amount of \$29,990.00 and allowing a 10% contingency of \$2,999.00.
- II. Authorizing the Administrative Services Director to approve change orders within the 10% contingency of \$2,999.00.

JUSTIFICATION: Whitmore Construction, Inc., of Banning, California is the lowest responsive and responsible bidder to construct Project No. 2013-05, “Construction of a New Restroom at City Hall.”

BACKGROUND: Currently the public can use the restrooms located at City Hall. They are allowed access to secure areas of the building and have to be given access through a key pad by an employee. By constructing a public restroom, the public will no longer have access to the secure areas of the building. This will allow for better security for City Hall as well as its employees. The Public Works staff advertised a “Notice Inviting to Bid”, as shown attached as Exhibit “A”, on July 19, 2013 and July 26, 2013 for Project No. 2013-05, “Construction of a New Restroom at City Hall.” The scope of work under this project includes the construction of a toilet room at an exterior corner of the City Hall building adjacent to the receptionist area.

On August 21, 2013 the City Clerk received two (2) bids and publicly opened and read out loud the following results:

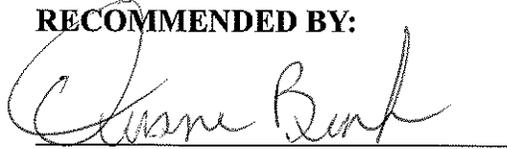
<u>Contractor</u>	<u>Total Bid</u>
1. Whitmore Construction, Inc.	\$ 29,990.00
2. Visionary Construction, Inc.	\$ 61,875.06

The Engineer’s estimate for the project is \$33,200.00. If approved the project is anticipated to begin within thirty (30) days of City Council approval. Work will be completed thirty (30) working days from the start date. Staff recently, under a separate contract, had the sewer service

lateral installed for the proposed bathroom. The total cost of the installation of the sewer lateral was \$6,500.00.

FISCAL DATA: The total project cost is equal to \$39,489.00, which includes the installation of the sewer lateral, and a 10% construction contingency. Staff budgeted \$45,000.00 in Account No. 430-2900-441.90-15 in the 2013-2014 Fiscal Year Budget to cover the project costs.

RECOMMENDED BY:



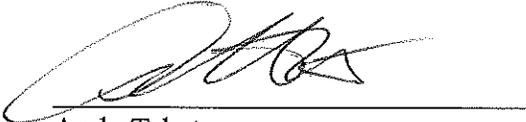
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2013-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2013-05, "CONSTRUCTION OF A NEW RESTROOM AT CITY HALL" AND REJECTING ALL OTHER BIDS

WHEREAS, currently the public can use the restrooms located at City Hall, and are allowed access to secure areas of the building and have to be given access through a key pad by an employee; and

WHEREAS, with the construction of a public restroom, the public will no longer have access to the secure areas of the building, which will allow for better security for City Hall as well as its employees; and

WHEREAS, a Notice Inviting Bids was advertised on July 19, 2013 and July 26, 2013, as shown attached as Exhibit "A", and two (2) bids were received and opened on August 21, 2013; and

WHEREAS, Whitmore Construction, Inc., of Banning, California is the lowest responsive and responsible bidder to construct Project No. 2013-05, "Construction of a New Restroom at City Hall"; and

WHEREAS, scope of work under this project includes the construction of a toilet room at an exterior corner of the City Hall building adjacent to the receptionist area.

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

SECTION 1. The City Council adopts Resolution No. 2013-82 awarding the Construction Contract for Project No. 2013-05, "Construction of a New Restroom at City Hall" to Whitmore Construction, Inc., of Banning, California for an amount of \$29,990.00 and allowing a 10% contingency of \$2,999.00 and rejecting all other bids.

SECTION 2. The Administrative Services Director is authorized to approve change orders within the 10% contingency of \$2,999.00.

SECTION 3. The City Manager is authorized to execute the contract agreements for Project No. 2013-05 "Construction of a New Restroom at City Hall." This authorization will be rescinded if the contract agreements are not executed within sixty (60) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 10th day of September, 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. 2013-82 was duly adopted by the City Council of the City of Banning at the regular meeting thereof held on the 10th day of September, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

NOTICE INVITING TO BID

NOTICE INVITING TO BID
PROJECT TITLE:
NO. 2013-05,
"CONSTRUCTION OF A
NEW RESTROOM AT
CITY HALL"

OWNER: City of Banning
PROJECT DESCRIPTION:
The construction of a single
accommodation toilet room
at an inside corner of the
exterior of the City of Ban-
ning City Hall building lo-
cated at 99 E. Ramsey
Street, Banning California,
92220. PLANS: Available
August 23, 2013 @ City of
Banning, 99 E. Ramsey St.,
Engineering Dept., (951)
922-3130 by a non-refund-
able deposit of \$20.00. RE-
QUIREMENTS: Prevailing
Wage, Certified Payroll and
Bid Bond. See specifica-
tions for additional require-
ments. MANDATORY
PRE-BID CONFERENCE:
August 6, 2013, 2 p.m., at
the project site, 99 E. Ram-
sey Street. SEALED BIDS
DUE: August 21, 2013 and
Opened Publicly @ 2:00
p.m., 99 E. Ramsey St.,
Attn. City Clerk
Dated: 7/17/13
Publication Dates:
7/19/13 7/26/13
Marie A. Calderon
City Clerk
Published in The Record
Gazette
No. 91678
07/19, 26, 2013

CITY COUNCIL AGENDA

DATE: September 10, 2013
TO: City Council
FROM: Duane Burk, Director of Public Works
SUBJECT: Resolution No. 2013-83 “Approving the Freeway Maintenance Agreement with the State of California, Department of Transportation.”

RECOMMENDATION:

- I. Adopt Resolution No. 2013-83, “Approving the Freeway Maintenance Agreement with the State of California, Department of Transportation” attached hereto as Exhibit “A.”
- II. Authorizing the City Manager to execute the Freeway Maintenance Agreement with the State of California, Department of Transportation.

JUSTIFICATION: The Sunset Avenue Grade Separation Project will be underway in 2014, and requires an updated Freeway Maintenance Agreement with the State of California, Department of Transportation (Caltrans).

BACKGROUND: City Council approved the original Maintenance Agreement on May 27, 1986 with the provision that the Agreement be amended from time to time as the limits and/or construction improvements change. The Sunset Avenue Grade Separation Project will make certain adjustments of the local street and road system and portions of State Highway (SR) 10.

The Freeway Maintenance Agreement dated May 27, 1986 delineated the division of maintenance responsibility as to separation structures and City streets, or portions thereof, within the freeway limits of the SR 10 freeway after the Highland Springs Avenue Grade Separation. This Agreement shall supersede the May 27, 1986 Freeway Maintenance Agreement in its entirety. The City’s execution of the new Freeway Maintenance Agreement is necessary to satisfy Caltrans’s requirements.

FISCAL DATA: As stated in Section II item 6 of the Agreement, the City will continue their control and maintenance of each of the affected, relocated, or reconstructed City streets and roads as shown in the plan map attached to the Agreement.

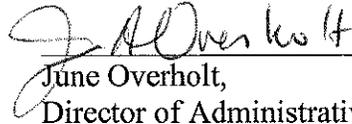
[SIGNATURES ON NEXT PAGE]

RECOMMENDED BY:



Duane Burk,
Director of Public Works

REVIEWED BY:



June Overholt,
Director of Administrative
Services/Deputy City Manager

APPROVED BY:



Andy Takata,
City Manager

RESOLUTION NO. 2013-83

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE FREEWAY MAINTENANCE AGREEMENT WITH THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION

WHEREAS, City Council approved the original Maintenance Agreement on May 27, 1986 with the provision that the Agreement be amended from time to time as the limits and/or construction improvements change; and

WHEREAS, the Sunset Avenue Grade Separation Project will make certain adjustments of the local street and road system and portions of State Highway Route (SR) 10; and

WHEREAS, This Agreement shall supersede the May 27, 1986 Freeway Maintenance Agreement in its entirety.

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

SECTION 1. The City Council adopts Resolution No. 2013-83 "Approving the Freeway Maintenance Agreement with the State of California, Department of Transportation."

SECTION 2. The City Manager is hereby authorized to execute the Freeway Maintenance Agreement with the State of California, Department of Transportation.

PASSED, APPROVED, AND ADOPTED this 10th day of September, 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 Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2013-83 was duly adopted by the City Council of the City of Banning at the Regular Meeting thereof held on the 10th day of September, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

**FREEWAY MAINTENANCE AGREEMENT WITH
THE STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**FREEWAY MAINTENANCE
AGREEMENT
WITH
CITY OF BANNING**

THIS AGREEMENT is made effective this _____ day of _____, 20___, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the CITY of BANNING; hereinafter referred to as "CITY" and collectively referred to as "PARTIES".

SECTION I

RECITALS

1. WHEREAS, on April 14, 1966 a Freeway Agreement was executed between CITY and STATE, wherein the PARTIES consented to certain adjustments of the local street and road system required for the development of that portion of STATE Highway Route (SR) 10 (Old Route 26) within the jurisdictional limits of the CITY of BANNING as a freeway; and
2. WHEREAS, recent adjustments to said freeway have now been completed, or are nearing completion, and the PARTIES hereto mutually desire to clarify and revise the division of maintenance, as defined in section 27 of the California Streets and Highways Code, and their respective responsibilities as to separation structures and local CITY streets and roads, or portions thereof, and landscaped areas lying within or outside those modified freeway limits; and
3. WHEREAS, pursuant to Section 5 of the above April 14, 1966 Freeway Agreement, CITY has resumed or will resume control and maintenance over each of the affected relocated or reconstructed CITY streets, except for those portions adopted as a part of the freeway proper; and
4. WHEREAS, the CITY and STATE have heretofore executed a Freeway Maintenance Agreement dated May 27, 1986 to delineate the division of maintenance responsibility as to separation structures and CITY streets, or portions thereof, within the freeway limits of the SR10 freeway.

NOW THEREFORE IT IS AGREED:

SECTION II

AGREEMENT

5. As of the Effective Date hereof, this Agreement shall supersede the May 27, 1986 Freeway Maintenance Agreement in its entirety.
6. CITY agrees to continue their control and maintenance of each of the affected relocated or reconstructed CITY streets and roads as shown on that plan map attached hereto, marked Exhibit A, and made a part hereof by this reference.

7. STATE agrees to continue control and maintenance of those portions adopted as a part of SR 10 Freeway proper as shown Exhibit A.
8. The PARTIES agree to share the maintenance responsibilities on individual infrastructure items as provided in Exhibit C attached and made a part of this Agreement by reference, as long as it is not in conflict with the terms of this Agreement. In case of a conflict, the terms of this Agreement shall prevail.
9. If there is mutual agreement on the change in the maintenance duties between PARTIES, the PARTIES can revise Exhibit C by a mutual written execution of Exhibit A and C.
10. When another planned future improvement has been constructed and/or a minor revision has been effected within the limits of the freeway herein described which will affect the PARTIES' division of maintenance responsibility as described herein, STATE will provide a new dated and revised Exhibit A which will thereafter supersede the attached original Exhibit A and become part of this Agreement.
11. CITY and STATE agree to accept their then respective operational and maintenance responsibilities and related associated costs thereof in the event jurisdictional boundaries of the PARTIES should change and Exhibit A is amended to reflect those changes.
12. CITY must obtain the necessary Encroachment Permits from STATE's District 8 Encroachment Permit Office prior to entering STATE right of way to perform CITY maintenance responsibilities. This permit will be issued at no cost to CITY.

13. VEHICULAR AND PEDESTRIAN OVERCROSSINGS

- 13.1. STATE will maintain, at STATE expense, the entire structure of any STATE constructed vehicular and pedestrian overcrossings of SR 10 below the deck surface except as hereinafter provided.
- 13.2. CITY will maintain, at CITY expense, the deck and/or surfacing and structural drainage system (and shall perform such work as may be necessary to ensure an impervious and/or otherwise suitable surface) and all portions of the structure above the bridge deck, including, but without limitation, lighting installations, as well as all traffic service facilities (sidewalks, signs, pavement markings, bridge rails, etc.) that may be required for the benefit or control of traffic using that overcrossing.
- 13.3. At such locations as shall be determined by STATE, screening shall be placed on STATE freeway overpasses on which pedestrians are allowed as directed by section 92.6 of the Streets and Highways Code. All screens installed under this program will be maintained by STATE, at STATE expense.

14. VEHICULAR AND PEDESTRIAN UNDERCROSSINGS

- 14.1. STATE will maintain the structure proper of all STATE-constructed vehicular and pedestrian undercrossings of STATE freeways while the roadway sections, including

the traveled way, shoulders, curbs, sidewalks, wall surfaces (including eliminating graffiti), drainage installations, lighting installations and traffic service facilities that may be required for the benefit or control of traffic using that undercrossing will be maintained by CITY.

- 14.2. CITY will request STATE's District Encroachment Permit Engineer to issue the necessary Encroachment Permit for any proposed change in minimum vertical clearances between the traveled way portion of the under roadway surface and the Structure that results from modifications to the under roadway (except when said modifications are made by STATE). If the planned modifications will result in a reduction in the minimum clearance within the traveled way, an estimate of the clearance reduction must be provided to STATE's Transportation Permit Engineer prior to starting work. Upon completion of that work, a clearance diagram will be furnished to STATE's Transportation Permit Engineer that shows revised minimum clearances for all affected movements of traffic, both at the edges of the traveled way and at points of minimum clearance within the traveled way.
15. WALLS AND COLUMNS – Responsibility for debris removal, cleaning, and painting to keep CITY's side of any wall structure or column free of debris, dirt, and graffiti shall not lie with STATE.
16. LANDSCAPED AREAS ADJACENT TO CROSSING STRUCTURES - Responsibility for the maintenance of any plantings or other types of roadside development lying outside of the fenced right of way area reserved for exclusive freeway use shall lie with CITY and not with STATE.
17. INTERCHANGE OPERATON - It is STATE's responsibility to provide efficient operation of freeway interchanges, including ramp connections to local streets and roads.
18. ELECTRICALLY OPERATED TRAFFIC CONTROL DEVICES
 - 18.1. The cost of installation, operation, maintenance, repairs, replacement and energy costs of safety lighting, traffic signals or other necessary electrically operated traffic control devices placed at interchanges of SR 10 Freeway and CITY streets and roads and at ramp connections or SR10 and CITY facilities shall be shared by the PARTIES as shown in Exhibit "B" which, by this reference, is made a part of this Agreement. (Shared Cost Electrical Agreement can be entered into by the PARTIES as a part of this agreement itself instead of a separate agreement. Or a separate "Shared Cost Electrical Agreement" may be executed in the future allocating these costs between the PARTIES.
 - 18.2. The said cost shall be paid by STATE and the CITY shall reimburse the STATE their agreed upon share.
 - 18.3. The said cost shall be paid by CITY and the STATE shall reimburse the CITY their agreed upon share.

18.4. Timing of traffic signals, which shall be coordinated with CITY to the extent that no conflict is created with freeway operations, shall be the sole responsibility of STATE.

19. BICYCLE PATHS - Except for bicycle paths constructed as permitted encroachments within STATE's right of way for which the permittee is solely responsible for all path improvements, STATE will maintain, at STATE expense, all fences, guard railing, drainage facilities, slope and structural adequacy of any bicycle path located and constructed within STATE's right of way. CITY will maintain, at CITY expense, a safe facility for bicycle travel along the entire length of the path by providing sweeping and debris removal when necessary; and all signing and striping and pavement markings required for the direction and operation of that non-motorized facility.

20. LEGAL RELATIONS AND RESPONSIBILITIES

20.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not PARTIES to this Agreement or to affect the legal liability of a PARTY to the Agreement by imposing any standard of care with respect to the operation and maintenance of STATE highways and local facilities different from the standard of care imposed by law.

20.2. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all of their officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.

20.3. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

21. PREVAILING WAGES:

21.1. Labor Code Compliance- If the work performed on this Project is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. CITY must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of

Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. CITY agrees to include prevailing wage requirements in its contracts for public work. Work performed by CITY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

21.2. Requirements in Subcontracts - CITY shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a "public work" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements set forth in CITY's contracts

22. INSURANCE.

22.1. SELF-INSURED - CITY is self insured. CITY agrees to deliver evidence of self-insured coverage in a form satisfactory to STATE, along with a signed copy of the Agreement.

22.2. SELF-INSURED using Contractor - If the work performed under this Agreement is done by CITY's/COUNTY's contractor(s), CITY shall require its contractor(s) to maintain in force, during the term of this agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE and shall be delivered to the STATE with a signed copy of this Agreement.

23. TERMINATION - This Agreement may be terminated by timely mutual written consent by PARTIES, and CITY's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.

24. TERM OF AGREEMENT - This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the PARTIES or until terminated by STATE for cause.

PARTIES are empowered by Streets and Highways Code Section 114 and 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

IN WITNESS WHEREOF, PARTIES hereto have set their hands and seals the day and year first above written.

THE CITY OF BANNING

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
DEBORAH FRANKLIN, Mayor

MALCOLM DOUGHERTY
Director of Transportation

ATTEST:

By: _____
MARIE A. CALDERON, City Clerk

By: _____
STEPHEN R. PUSEY
Deputy District Director
Maintenance, District 8

By: _____
DAVID J. ALESHIRE, City Attorney
ALESHIRE & WYNDER, LLP

EXHIBIT "A"

DELEGATION OF MAINTENANCE

EXHIBIT "A" Sheet 1 of 8 Intentionally Left Blank

EXHIBIT "B"

INTENTIONALLY LEFT BLANK

EXHIBIT "C"

INDIVIDUAL MAINTENANCE ITEMS

CITY COUNCIL AGENDA

Date: September 10, 2013

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2013-84, "Authorizing the Submittal of an Application, Acceptance of an Allocation of Funds and Execution of a Grant Agreement with the California Department of Transportation for an Airport Improvement Program Matching Grant"

RECOMMENDATION: Adopt Resolution 2013-84:

- I. Authorizing the Submittal of an Application, Acceptance of an Allocation of Funds and Execution of a Grant Agreement with the California Department of Transportation for an Airport Improvement Program Matching Grant.
- II. The City Manager is authorized to execute any documents required to apply for and accept these subject funds on behalf of the City of Banning.
- III. The Administrative Services Director is authorized to make the necessary budget adjustments to record the grant revenue into the Airport Fund.

JUSTIFICATION: City Council's authorization is essential in order to obtain and utilize Department of Transportation ("DOT") funds for Airport Improvement Program ("AIP") Project No. 3-06-0018-013-2013, at the Banning Municipal Airport.

BACKGROUND: On September 13, 2011, the City Council adopted Resolution No. 2011-78, "Approving the AIP Grant Agreement Offer from the Federal Aviation Administration ("FAA") for AIP Project No. 3-06-0018-11-2011, 'Taxiway 'A' Relocation'" for the design of the Taxiway "A" Relocation project at the Banning Municipal Airport.

During the design process it was determined that by relocating the taxiway to the south from its current location would result in the placement of the existing fueling station within the Taxiway Object Free Area ("TOFA"). This becomes a non-compliance issue with FAA standards as well as a possible safety issue. Staff met with FAA who agreed to grant the City additional grant funds to design the relocation of the fueling facility. On September 11, 2012 the City Council adopted Resolution No. 2012-72, "Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for AIP Project No. 3-06-0018-012-2012 (D), 'Taxiway 'A' Relocation - Phase 1 Relocation of the Fueling Facility'" and Resolution No. 2012-73, "Approving an Amendment to the Professional Services Agreement with C&S Engineers, Inc. for Design Services at the Banning Municipal Airport". The scope of work included in the amendment was to design the replacement of the existing 10,000-gallon underground storage tank ("UST") with an aboveground storage tank ("AST") of equal size on the existing transient apron.

On July 23, 2013, City Council adopted Resolution No. 2013-77 "Awarding the Contracts for Federal Aviation Administration Airport Improvement Project No. 3-06-0018 AIP 12, 'Relocate Taxiway 'A' Phase 1, Relocate Fuel Facility' and Approving the Grant Agreement Offer from the Federal Aviation Administration." As part of the Grant Agreement Offer, FAA will reimburse the City ninety percent (90%), up to \$558,225.00, of the construction costs, including costs for construction administration and observation services and City staff administration time. The City is required to fund the remaining costs, approximately \$62,026.00

Pursuant to the Public Utilities Code section 21683.1, the DOT can provide grants to be applied towards to the local match of Federal Airport Improvement Program grants. If this resolution is approved staff will submit a DOT grant application requesting 5%, up to \$27,911.00, of the amount of the FAA grant for AIP Project No. 3-06-0018-013-2013, "Taxiway 'A' Relocation – Phase 1 Relocation of the Fueling Facility."

FISCAL DATA: Currently, the City's match is equal to \$62,026.00. With the assistance of the DOT grant in the amount of \$27,911.00, the City's match will be reduced to \$34,115.00.

RECOMMENDED BY:



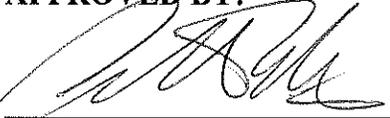
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2013-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE SUBMITTAL OF AN APPLICATION, ACCEPTANCE OF AN ALLOCATION OF FUNDS AND EXECUTION OF A GRANT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION, FOR AN AIRPORT IMPROVEMENT PROGRAM MATCHING GRANT

WHEREAS, the City of Banning and the Federal Aviation Administration are soon to be parties to Federal Airport Improvement Program (“AIP”) Grant 3-06-0018-013-2013, for the construction of the Taxiway “A” Relocation – Phase 1 Relocation of the Fueling Facility project at the Banning Municipal Airport; and

WHEREAS, the California Department of Transportation, pursuant to the Public Utilities Code section 21683.1, provides grants of 5% of Federal Aviation Administration grants to airports; and

WHEREAS, the California Department of Transportation requires the City Council to adopt a resolution authorizing the submission of an application for an AIP Matching Grant.

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

SECTION 1. City Council adopts Resolution No. 2013-84, “Authorizing the Submittal of an Application, Acceptance of an Allocation of Funds and Execution of a Grant Agreement with the California Department of Transportation, for an AIP Matching Grant.”

SECTION 2. The City Manager is authorized to execute any documents required to apply for and accept these subject funds on behalf of the City of Banning.

SECTION 3. The Administrative Services Director is authorized to make the necessary budget adjustments to record the grant revenue into the Airport Fund

PASSED, APPROVED, AND ADOPTED this 10th day of September, 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. 2013-84, was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 10th day of September, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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

DATE: September 10, 2013

TO: Chair and Successor Agency Board Members

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

SUBJECT: Approval of the Settlement Agreement, Release of all Claims, and Bill of Sale for Personal Property between The Haven Company, Inc. and The Banning Successor Agency

RECOMMENDATION:

That the City Council, acting in its capacity as the Successor Agency to the Dissolved Community Redevelopment Agency of the City of Banning approve the Settlement Agreement, Release of all Claims, and Bill of Sale for Personal Property between The Haven Company, Inc. and The Banning Successor Agency.

BACKGROUND:

In November of 2009, the former Community Redevelopment Agency of the City of Banning ("Successor Agency") entered into an Owner Participation Agreement ("OPA") with The Haven Company, Inc. located on the first floor of 42 W. Ramsey Street. Pursuant to the terms of the OPA, the Successor Agency agreed to provide a \$30,000 loan to assist The Haven Company, Inc. with the installation of a business sign, construction of an outdoor patio, and the continued uninterrupted use of a coffee shop and art gallery. The term of the loan stated in the OPA was six years at 3% annual interest. The \$30,000 loan came from the 2007 Bond Proceeds.

Ultimately, The Haven Company, Inc. was never profitable and went out of business. They were in default of the OPA on several grounds and had utilized \$27,000 of the loan provided by the Successor Agency. The only remaining assets of The Haven Company, Inc. were a variety of furnishings and restaurant equipment (the "equipment").

In October of 2011, the Successor Agency received a letter from the President of The Haven Company, Inc. with an offer to resolve the issue of the \$27,000 loan. The letter outlined that the only remaining assets of The Haven Company, Inc. were the equipment and offered the Successor Agency all that was remaining (*Attachment 1*). There was verbal agreement to the offer; however the settlement terms were never formally memorialized.

In July of 2013, the Successor Agency memorialized the terms of the offer by having the President of the Haven Company, Inc. sign a Settlement Agreement, Release of All Claims, and Bill of Sale for Personal Property with the Successor Agency (*Attachment 2*). The Successor Agency will ultimately resell and dispose of the equipment based on its appraised valuation.

Once the Successor Agency approves the attached settlement document staff will present the item to the Banning Oversight Board for their review and consideration. Upon approval of the Banning Oversight Board, the settlement documents will be forwarded to the State Department of Finance for review and consideration.

FISCAL IMPACT:

The recommended action does not, in itself, cause any new financial obligations or revenue. Any proceeds generated from the future sale and disposal of the equipment will conform with the requirements of the 2007 Bonds.

RECOMMENDED BY:



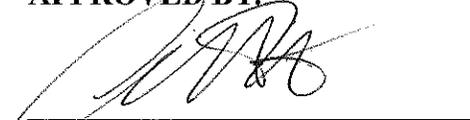
Bill R. Manis
Economic Development Director

REVIEWED BY:



June A. Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andrew J. Takata
City Manager

Attachments:

1. The Haven Company, Inc. Letter
2. Settlement Documents

ATTACHMENT 1

The Haven Company Inc. Letter

City of Banning
RECEIVED

OCT 06 2011

October 6, 2011
City Manager's Office

The Haven Co.
1780 Orchard Heights Ave
Beaumont, CA 92223

Andy Takata, City Manager
99 E Ramsey St.
Banning, CA 92220

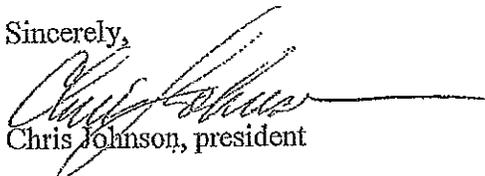
Dear Mr. Takata,

The Haven would like to resolve the issue of the \$27,000 loan made to the Haven Co. for the construction of the Haven sign. The sign is in place attached to the building of what was the Haven Coffee House, 42 W. Ramsey St. in Banning.

All of the Haven building improvements and restaurant equipment purchases came from private loans from individuals, but mostly from Calvary Chapel. When the Haven Co. turned the business over to the Haven Café, in August of 2010, the Haven Café assumed all debts excepting the Calvary Chapel loans, but did agree to assume the \$30,000 city of Banning loan *after* it was fully funded. When the loan was only funded to the \$27,000 amount, the agreement was not finalized, leaving the Haven Co. responsible for the loan. I learned later that the transfer of loan responsibility had to be first approved by the city which had not taken place.

The Haven was never profitable and its only assets are the equipment now at 42 W. Ramsey. We would like to settle the debt by offering the city all the furnishings and equipment owned by the Haven Co. It is difficult to say what these would presently be valued at, but attached is a list of what the Haven purchased the equipment for.

Sincerely,


Chris Johnson, president

OCT - 6 2011

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ATTACHMENT 2
Settlement Documents

SETTLEMENT AGREEMENT, RELEASE OF ALL CLAIMS
&
BILL OF SALE FOR PERSONAL PROPERTY

This Settlement Agreement, Release of All Claims & Bill of Sale of Personal Property (the "**Agreement**") is entered into by and between THE HAVEN COMPANY, INC., a California corporation ("**Corporation**") and THE BANNING SUCCESSOR AGENCY, a municipal corporation (the "**Agency**"), collectively referred to as (the "**Parties**"), to terminate fully and finally all disputes arising out of, or related to, the Dispute defined hereinafter. Agency and Corporation are occasionally referenced herein collectively as the "**Parties**" and individually as a "**Party**".

RECITALS

WHEREAS, On or about November 18, 2009, the Agency entered into an Owner Participation Agreement ("**OPA**") with the Company. By the OPA, the Agency agreed to provide a \$30,000.00 loan (the "**Loan**") to assist the Corporation with the installation of a business sign, construction of an outdoor patio, and the continued, uninterrupted use of a coffee shop and art gallery (the "**Project**"). The Project was to occupy the entire ground floor of that building located at 42 West Ramsey Street, Banning, California (the "**Site**"). The term of the Loan was stated in the OPA to be six years at 3% annual interest.

WHEREAS, The Corporation remains in default of the OPA on several grounds including, without limitation, the following:

- a) The OPA clearly restricted the Corporation from transferring its business interests unless it got prior written approval from the Agency. (OPA Article 7.) In about November of 2010, the Agency received notice that there were "new owners" of the Project. Per a Business Sale Agreement dated August 17, 2010, the Corporation was purchased for about \$50,000 by a new business entity. Further investigation revealed that there had been multiple transfers of business interests in the Project amongst the Corporation and other entities (the "**Other Business Entities**") without prior written consent of the Agency as required by the OPA.
- b) OPA Section 2.2.1.5 states, "Within 90 days from and after the Effective Date [of the OPA], Participant shall complete construction of the Project. . ." Under this provision, Project improvements should have been completed no later than February 18, 2010. Project improvements to have been completed within the 90-day period included (i) installation of the sign, and (ii) construction/improvement of the outdoor patio for customer use, and (iii) operations as a coffeehouse and art gallery. In breach of these requirements, the Corporation never completed the patio component of the Project.
- c) OPA Section 2.2.1.5 requires that Project completion entails two critical thresholds: (1) the City's issuance of a certificate of completion, and (2) the Haven's "actual taking of Site occupation." The Corporation, followed by Other

Business Entities, took actual occupancy of the Site without fulfilling the prerequisites for such occupation under OPA Section 2.2.1.5.

- d) The OPA required Project to be operated as an art gallery in a portion of the Site; however, this art gallery component was discontinued without permission of the Agency.
- e) Operation of the Project was required to continue without interruption for a period of not less than six years (OPA Section 3.2). However, after less than two years of operation, on January 2011, the Project was unilaterally closed.

WHEREAS, The allegations of default identified in the foregoing Recital and any other disputes over the Corporation's performance of the OPA are collectively referenced herein as the "**Dispute**". Notwithstanding the Dispute, the Agency has disbursed \$27,000 of the Loan to the Corporation with only \$3,000 remaining as a retention amount (which retention was expressly allowed under the terms of OPA Section 4.1.4.1).

WHEREAS, Consistent with the terms of this Agreement, the City and Corporation wish to settle the Dispute without resort to litigation or adversarial administrative process. Accordingly, the Parties are executing this Agreement, whereby Corporation shall transfer all its right title and interest in certain equipment to the Agency; Corporation warrants that it holds its right title and interest to such equipment clear and without encumbrance. In exchange, the Agency shall release Corporation from all liability that may have arisen to date as a result of the Dispute.

AGREEMENT

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

1. **Settlement Terms.** Subject to the terms and conditions set forth herein, Corporation agrees to sell, assign, convey and deliver to Agency, and Agency agrees to take and acquire from Corporation, free and clear of all liens, claims and encumbrances, the following items of personal property (collectively, the "Equipment"):

1. Tables and chairs
2. Commercial refrigerator (Victory vf-2)
3. Commercial freezer (Victory vf-2)
4. Two Torrey refrigerated display cabinet (TEM 200)
5. Two APW Wyott Soup Warmers (RCW-7-sp)
6. Espresso machine (Astro Mega II m2s-017-bk)
7. Ice-O-Matic ice machine (ICEU 150)
8. Toaster (Missing)
9. Panini Grill sandwich heater (star gx14/G) (Missing)
10. Bunn 3 pot coffee maker
11. Two smoothie blenders (Vitamix VM 748) (Missing)

12. Amana commercial microwave 1,000w
13. Everest Mega-Top Sandwich Prep table (EPBR2)
14. Metal shelves
15. Three compartment sink
16. One compartment sink

2. **Free and Clear Transfer of Equipment.** Other than any obligation or burden imposed on Agency under this Agreement, Corporation's transfer of the Equipment under this Agreement shall be free and clear of all liens, claims, interests, and encumbrances. Corporation warrants that it has sole ownership of the Equipment, is authorized for all purposes to transfer title to the Equipment, and Corporation shall indemnify, defend and hold harmless the Agency, its officers, agents and employees against any and all actions, suits, claims, damages to persons or property, losses, costs (including attorneys' fees), penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of Corporation's transfer of the Equipment's title to the Agency.

The Corporation shall provide title to the Equipment into the Agency's name pursuant to that "Bill of Sale" attached hereto as **Exhibit "A"**, at which time Corporation shall have no other obligation regarding the Equipment. However, if the Equipment is not currently in Corporation's possession or in a location reasonably accessible to Corporation, the Agency may reasonably request by that Corporation provide Agency with information concerning where the same may be and the Corporation shall execute reasonable documents, prepared by the Agency, to effectuate the Agency's possession of the Equipment.

3. **Mutual Release.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Agency and Corporation do hereby release and forever discharge each other and the "Releasees" hereunder, consisting of the Parties' elected or appointed public officials, officers, employees and agents, including, but not limited to, each of their associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, elected or appointed public officials, attorneys, and all persons acting by, through, under or in concert with them, or any of them), of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (collectively called "Claims"), which Claims the Parties now have or may hereafter have against each other and each other's Releasees, or any of them, arising from, or related to, the Dispute.

4. **Discovery of Different or Additional Facts.** Except as otherwise necessary to enforce the terms of this Agreement, each of the undersigned persons further acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to any Claims arising from, or related to, the Dispute, and expressly agree to assume the risk of the possible discovery of such additional or different facts, and further agree that this Agreement and its mutual releases shall be and remain effective in all respects regardless of such additional or different facts.

5. **Release of Unknown Claims.** Except as otherwise necessary to enforce the terms of this Agreement, each of the undersigned persons agree that the mutual releases set forth

in this Agreement are a release of ALL Claims arising from, or related to, the Dispute and, nonetheless, such releases are intended to encompass all known and unknown, foreseen and unforeseen Claims relating to the Dispute.

6. **Waiver of Civil Code Section 1542.** Except as otherwise necessary to enforce the terms of this Agreement, each of the undersigned persons expressly agrees to waive and relinquish all rights and benefits that they each may have under Section 1542 of the Civil Code of the State of California. That section reads as follows:

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

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

8. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the undersigned persons and their respective heirs, legal representatives, successors and assigns. To this end, the Parties acknowledge that the City of Banning may be designated, either expressly or by operation of law, as the successor entity to the Agency.

9. **No Other Pending Actions.** The undersigned persons represent and warrant that they have not filed any complaint(s), cross-complaint(s) and/or charge(s) against each other or the Releasees, arising out of or relating to the matters herein with any state or federal agency or court; and that if any such agency or court assumes jurisdiction of any complaint or charge against any party, or its predecessors, successors, heirs, assigns, employees, members, officers, directors, agents, attorneys, subsidiaries, divisions or affiliated corporations or organizations, whether previously or hereafter affiliated in any manner, on behalf of the undersigned or any other party, whenever filed, that party will request such agency or court to withdraw and dismiss the matter forthwith.

10. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that prior to signing this Agreement they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment. The Parties further specifically represent that prior to signing this Agreement they have conferred with their counsel to the extent desired concerning the legal effect of this Agreement.

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

12. **Enforcement Costs.** Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

13. **Judicial Enforcement of Agreement.** In the event that Corporation breaches this Agreement, the Agency may immediately pursue legal action for Corporation's breach of the OPA, seeking any remedy permitted by law including, without limitation, judicial enforcement of the OPA. This Agreement constitutes Corporation's acknowledgement that the Dispute represents a breach of the OPA by Corporation and/or the Other Entities. The City may use this Agreement in court to demonstrate a default of the OPA.

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

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

16. **Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

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

18. **Jurisdiction and Venue.** The Parties (a) agree that any suit action or other legal proceeding arising out of or relating to this Agreement shall be brought in state or local court in the County of Riverside or in the Courts of the United States of America in the district in which the Agency is located, (b) consents to the jurisdiction of each such court in any suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue or any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the Agency and the Corporation agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

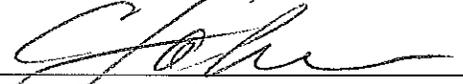
19. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations,

inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

20. **Authority To Sign.** 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 and to bind that party, including its members, agents and assigns, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

21. **Modifications.** Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each party hereto in order to become effective.

IN WITNESS WHEREOF, the undersigned have executed, approved and agree to be bound by this Agreement on the dates set forth below:

Dated: <u>7-16</u> , 2013	“CORPORATION” THE HAVEN COMPANY, INC. By: <u></u> Chris Johnson, President
Dated: <u>7/17</u> , 2013	“AGENCY” BANNING SUCCESSOR AGENCY By: <u></u> Andrew Takata, Agency Executive Director

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Lona N. Laymon, Asst. Agency Counsel

EXHIBIT "A"

BILL OF SALE

This Bill of Sale is entered into by and between THE HAVEN COMPANY, INC., a California corporation ("**Corporation**") and THE BANNING SUCCESSOR AGENCY, a municipal corporation (the "**Agency**"), in connection with the sale and transfer of all right, title and interest in and to the assets listed on Schedule 1 attached hereto (collectively, the "Equipment").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Corporation agrees as follows:

1. Corporation covenants that it is the lawful owner of the Equipment, and that it has the right to sell, transfer, and convey the same. Corporation owes no obligations and has contracted no liabilities affecting the Equipment or which might affect the consummation of the Agency's acquisition of the Equipment and that have not been expressly disclosed to Buyer. Corporation's transfer of the Equipment hereunder shall be free and clear of all liens (including UCC financing statements), claims, interests, and encumbrances. Corporation warrants that it has sole ownership of the Equipment, is authorized for all purposes to transfer title to the Equipment, and Corporation shall indemnify, defend and hold harmless the Agency, its officers, agents and employees against any and all actions, suits, claims, damages to persons or property, losses, costs (including attorneys' fees), penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of Corporation's transfer of the Equipment's title to the Agency.

2. Corporation hereby sells, assigns, transfers and conveys to Agency forever all of Corporation's right, title and interest in and to the Equipment.

3. Equipment further covenants and agrees that it shall execute such other and further instruments and documents as Agency may reasonably request to carry into effect or to evidence further the transfer of the Equipment to Agency.

4. Corporation covenants that the Equipment is complete, in reasonably new, or near new, and good working condition. In August 2012, the Agency retained the professional services of Fred Bush & Associates, a restaurant supplier and equipment appraiser, who subsequently inspected the Equipment and its condition. It was determined that the Equipment has an in-place value of \$13,000 to an existing owner/tenant or a value of \$5,500 if the items had to be removed and resold. The Corporation warrants that the Equipment remains in the same, or substantially the same, condition as observed by the Agency on such inspection date.

5. The provisions of this Bill of Sale shall bind and benefit the legal representatives, successors and assigns of Corporation and Agency.

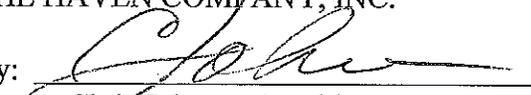
6. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of California. This Bill of Sale may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

7. The parties signing below represent that they are duly authorized to execute this agreement and agree that the sale shall be effective on the date stated below.

IN WITNESS WHEREOF, this Bill of Sale is executed of this day of _____, 2013.

Dated: 7-16, 2013

“CORPORATION”
THE HAVEN COMPANY, INC.

By: 
Chris Johnson, President

Dated: 7/17, 2013

“AGENCY”
BANNING SUCCESSOR AGENCY

By: 
Andrew Takata, Agency Executive Director

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Lona N. Laymon, Asst. Agency Counsel

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Schedule 1 to Bill of Sale

The Equipment consists of:

1. Tables and chairs
2. Commercial refrigerator (Victory vf-2)
3. Commercial freezer (Victory vf-2)
4. Two Torrey refrigerated display cabinet (TEM 200)
5. Two APW Wyatt Soup Warmers (RCW-7-sp)
6. Espresso machine (Astro Mega II m2s-017-bk)
7. Ice-O-Matic ice machine (ICEU 150)
8. Toaster (Missing)
9. Panini Grill sandwich heater (star gx14/G) (Missing)
10. Bunn 3 pot coffee maker
11. Two smoothie blenders (Vitamix VM 748) (Missing)
12. Amana commercial microwave 1,000w
13. Everest Mega-Top Sandwich Prep table (EPBR2)
14. Metal shelves
15. Three compartment sink
16. One compartment sink

**SUCCESSOR AGENCY TO THE DISSOLVED
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING
REPORT OF OFFICERS**

DATE: September 10, 2013

TO: Chair and Successor Agency Board Members

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

SUBJECT: Long-Range Property Management Plan

RECOMMENDATION:

That the City Council, acting as the Successor Agency to the Community Redevelopment Agency of the City of Banning, adopt a Resolution No. 2013-10 SA (*Attachment 1*) approving the Long-Range Property Management Plan (*Attachment 2*) pursuant to California Health and Safety Code § 34191.5 and approving certain related actions.

BACKGROUND:

The Community Redevelopment Agency of the City of Banning (the "Agency") was dissolved February 1, 2012. Consistent with the provisions of the California Health and Safety Code ("HSC"), the City Council elected to serve as the Successor Agency to the Community Redevelopment Agency of the City of Banning (the "Successor Agency"). On April 26, 2013, the Successor Agency received its Finding of Completion (the "FOC") from the California Department of Finance (the "DOF") pursuant to HSC § 34179.7. Within six (6) months of the date of the FOC, HSC § 34191.5 requires the Successor Agency to prepare a Long-Range Property Management Plan ("LRPMP") to address the disposition and use of the real property assets held by the Successor Agency.

In accordance with HSC § 34191.5, the Successor Agency has prepared its LRPMP, which is appended to the attached Resolution that identifies the disposition and uses of Successor Agency properties. Subject to approval by the Oversight Board for the Successor Agency to the Community Redevelopment Agency of the City of Banning ("Oversight Board"), the LRPMP will be submitted to the DOF. Once the LRPMP has received approvals from the Oversight Board and the DOF, the Successor Agency may act upon its implementation.

DISCUSSION:

The LRPMP must include an inventory (with specified information) about each property, and address the use or disposition of each property. Permitted uses for the property pursuant to the HSC include:

1. Retention of the property for governmental use;
2. Retention of the property for future development;
3. Sale of the property; and
4. Use of the property to fulfill an enforceable obligation.

Upon DOF's approval of the LRPMP, the properties are to be placed in a Community Redevelopment Property Trust Fund administered by the Successor Agency in accordance with the approved LRPMP. If the LRPMP plan calls for use or liquidation (sale to obtain revenues) of a property for a project identified in an approved redevelopment plan, that property is to be transferred to the sponsoring community for that purpose. If the LRPMP calls for the liquidation of the property or use of revenues from the property for purposes other than a project identified in a redevelopment plan or other than to fulfill an enforceable obligation, the proceeds from the sale are to be distributed as property taxes to the taxing entities.

The Successor Agency has control of 13 properties, all of which are located within the boundaries of the Agency's Project Area and are subject to the provision of the Agency's 1994 Merged Downtown and Midway Project Area Redevelopment Plan and subsequent 2002 amendment, the Agency's Five-Year Implementation Plan 2009/2010 through 2013/2014, and the City's 2006 General Plan, Title 17 Zoning Ordinance, and land use regulations.

The Properties have been divided into six (6) sites as summarized in the table below:

Summary of Successor Agency Properties						
Site No.	Site Reference (x)¹	Address	Assessor Parcel No.	Zone	Lot Size (acres)	Permissible Use
1	Civic Center Parking Lot (1)	128 N San Gorgonio Av	541-141-013	DC	0.27	Governmental Use
2	Chamber of Commerce Property (3)	60 E Ramsey St	541-181-014, 021, & 023	DC	0.41	Governmental Use
3	DeZorzi Property (1)	2301 W Ramsey St	538-162-016	HSC	1.45	Fulfill Enforceable Obligation
4	Ramsey St Parking Lot (1)	646 W Ramsey St	540-191-008	DC	0.22	Future Development
5	Airport Property (2)	Westward Av	532-180-034 532-130-011	I	49.43	Future Development
6	Justice Center Office Complex (5)	W Ramsey St E Williams St	541-150-025 & 026 541-150-027, 028, & 029	DC	3.48	Future Development

¹ Number of parcels
 DC – Downtown Commercial
 HSC – Highway Serving Commercial
 I – Industrial

FISCAL DATA:

All costs related to the implementation of the LRPMP shall be reimbursed from the proceeds of the sale of the effected properties in accordance with the LRPMP.

RECOMMENDED BY:


 Bill R. Manis
 Economic Development Director /
 Public Information Officer

APPROVED BY:


 Andrew J. Takata,
 City Manager

Attachments:

1. Resolution 2013-10 SA

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2. Long-Range Property Management Plan

ATTACHMENT 1
Resolution No. 2013-10 SA

RESOLUTION NO. 2013-10 SA

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING APPROVING THE LONG-RANGE PROPERTY MANAGEMENT PLAN PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34191.5 AND APPROVING CERTAIN RELATED ACTIONS

WHEREAS, the Community Redevelopment Agency of the City of Banning (the "Agency") was dissolved February 1, 2012; and

WHEREAS, consistent with the provisions of the California Health and Safety Code ("HSC"), the City Council elected to serve as the Successor Agency to the Community Redevelopment Agency of the City of Banning (the "Successor Agency"); and

WHEREAS, on April 26, 2013, the Successor Agency received its Finding of Completion (the "FOC") from the California Department of Finance (the "DOF") pursuant to HSC § 34179.7; and

WHEREAS, within six (6) months of the date of the FOC, HSC § 34191.5 requires the Successor Agency to prepare a Long-Range Property Management Plan ("LRPMP") to address the disposition and use of the real property assets held by the Successor Agency; and

WHEREAS, in accordance with HSC § 34191.5, the Successor Agency has prepared its LRPMP, which is attached as Exhibit "A" to this Resolution that identifies the disposition and uses of Successor Agency properties; and

WHEREAS, subject to approval by the Oversight Board for the Successor Agency to the Community Redevelopment Agency of the City of Banning, the LRPMP will be submitted to the DOF; and

WHEREAS, once the LRPMP has received approvals from the Oversight Board and the DOF, the Successor Agency may act upon its implementation; and

WHEREAS, consistent with the applicable provisions of the HSC, it is recommended that the Successor Agency approve the attached LRPMP; and

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

NOW, THEREFORE, BE IT RESOLVED that the Successor Agency to the Community Redevelopment Agency of the City of Banning hereby finds, resolves, approves, determines, and directs as follows:

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

SECTION 2. The Long-Range Property Management Plan attached to this Resolution as Exhibit "A" is hereby approved.

SECTION 3. The City Manager, as Executive Director of the Successor Agency, or designee, is hereby authorized to transmit the Long-Range Property Management Plan attached to this Resolution as Exhibit "A" to the Oversight Board for the Successor Agency to the Community Redevelopment Agency of the City of Banning for their review and consideration.

SECTION 4. Subsequent to the approval of the Long-Range Property Management Plan by the Oversight Board for the Successor Agency to the Community Redevelopment Agency of the City of Banning, the City Manager, as Executive Director of the Successor Agency, or designee, is hereby authorized and directed to transmit the Long-Range Property Management Plan to the California Department of Finance and to take such actions and execute such documents as are necessary to implement the Long-Range Property Management Plan and to effectuate the intent of this Resolution.

SECTION 5. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED this 10th day of September, 2013.

Deborah Franklin, Chairperson
Successor Agency

ATTEST:

Marie A. Calderon, Secretary
Successor Agency

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

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

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. 2013-10 SA was duly adopted by the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, California, at a joint meeting thereof held on the 10th day of September, 2013 by the following vote, to wit:

AYES:

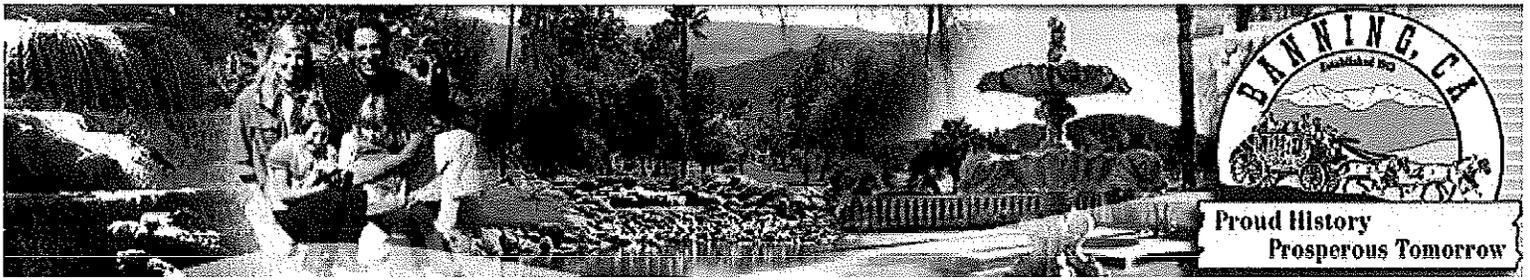
NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Successor Agency
City of Banning, California

ATTACHMENT 2 to Staff Report
EXHIBIT A to Resolution
Long-Range Property Management Plan



2013 LONG RANGE PROPERTY MANAGEMENT PLAN



Prepared for the:
Successor Agency to the dissolved
Community Redevelopment Agency
of the City of Banning
99 E. Ramsey St.
Banning, CA 92220
www.banning.ca.us.ca.us

July 2013

Prepared by:

Urban Futures Inc.
Corporate Office
3111 North Tustin Street,
Suite 230
Orange, CA 92865
(714) 283-9334 • FAX (714) 283-5465

Northern California Office
1470 Maria Lane, Suite 315
Walnut Creek, CA 94596
(925) 478-7450 • FAX (925) 658-2583
www.urbanfuturesinc.com

UFI URBAN FUTURES | Incorporated





2013 LONG RANGE PROPERTY MANAGEMENT PLAN

CITY COUNCIL/ SUCCESSOR AGENCY BOARD

Debbie Franklin, *Mayor*

Bob Botts, *Mayor Pro Tem*

Edward Miller, *Councilmember*

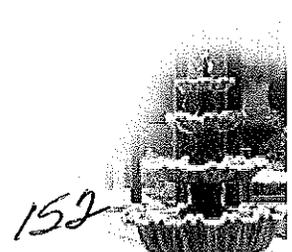
Art Welch, *Councilmember*

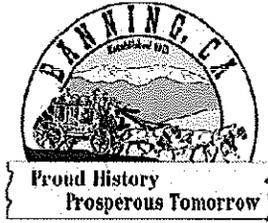
Don M. Peterson, *Councilmember*

CITY STAFF

Andrew J. Takata, *City Manager*

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





2013 LONG RANGE PROPERTY MANAGEMENT PLAN

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I. INTRODUCTION

The City of Banning (the "City") incorporated on February 6, 1913, and has grown to 23.10 square miles. It is located in Riverside County, lies across Interstate 10 in the San Geronio Pass, and is approximately 30 miles west of Palm Springs and 90 miles east of downtown Los Angeles. The California Department of Finance (the "DOF") reports the City's population to be 30,170 as of January 1, 2013.

The City is named for Phineas Banning, stagecoach line owner and the "Father of the Port of Los Angeles." Initially, Banning served as a stagecoach and railroad stop between the Arizona territories and Los Angeles.



Former Redevelopment Agency

The former City of Banning Community Redevelopment Agency (the "Agency") was organized (1983) pursuant to § 33000 *et seq.* of the California Health and Safety Code (the "HSC") and was responsible for the administration of redevelopment activities within the City. The Redevelopment Plan for the Downtown Project was adopted on June 12, 1978, and amended in 1979, 1980, 1993, and 1994. The Redevelopment Plan for the Midway Project was adopted on June 10, 1986, and amended in 1993 and 1994. The Redevelopment Plan for the Highland Springs Project was adopted in August 1987 and terminated on April 15, 1992. On February 26, 2002, the Downtown Project and Midway Project were merged. The total acreage of the Merged Downtown and Midway Project is 1,528.80.





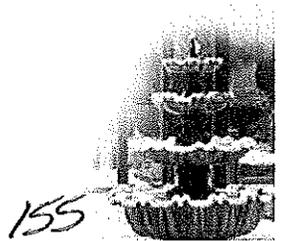
The Redevelopment Plan is summarized as follows:

Plan Chronology and Time Limits											
<i>Merged Downtown and Midway Project</i>											
Highland Springs Project	Downtown Project					Midway Project			Amend to Merge Downtown and Midway Project	Added Territory to Merged Project	
	Original Project	Amend No. 1	Amend No. 2	Amend No. 3	AB 1290 Amend	Original Project	Amend No. 1	AB 1290 Amend			
Plan Adoption											
Date of Adoption	Aug 1987	Jun 12, 1978	Jul 17, 1979	Jun 9, 1980	Apr 27, 1993	Dec 13, 1994	Jun 10, 1986	Dec 14, 1993	Dec 13, 1994	Feb 26, 2002	Feb 26, 2002
Ordinance Number	929	709	736	753	1115	1165	906	1143 ¹	1164	1280 ^{1,2}	1280
Base Year	NA	1977-78	1978-79	1979-80	NA	NA	1985-86	2001-02	NA	NA	2001-02
Effectiveness of Plan	Terminated on or prior to April 15, 1992	35 years	35 years	35 years	NA	NA	30 years	30 years	NA	NA	30 years
Project Area Size (acres)	NA				NA	NA		28.8	NA	NA	1,500
Time Limits											
For Initiation of Eminent Domain	NA	February 26, 2014			Estab'd new time limits	Estab'd new time limits	February 26, 2014		Estab'd new time limits	Estab'd new time limits	Feb 26, 2014
Establishment of Indebtedness	NA	Jun 12, 2013	Jul 17, 2014	June 9, 2015			Jun 10, 2016	Dec 14, 2023			Feb 26, 2032
Effectiveness of Plan	NA	Jun 12, 2013	Jul 17, 2014	June 9, 2015			Jun 10, 2016	Dec 14, 2023			Feb 26, 2032
Repayment of Indebtedness	NA	Jun 12, 2023	Jul 17, 2024	June 9, 2025			Jun 10, 2026	Dec 14, 2033			Feb 26, 2047
Financial Limits											
Maximum Lifetime Tax Increment for Pre-1994 Plans	NA	\$620,000,000			NA	NA	\$55,000,000	No Limit	NA	NA	No Limit
Maximum Bonded Debt Outstanding	NA	\$211,000,000									

1. Ordinance 1143 did not authorize the Agency to collect tax increment. Ordinance 1280 established 2001-02 as the base year for Amendment No. 1.
2. Ordinance 1280 established February 26, 2014 as the deadline for commencement of eminent domain proceedings for all plans (12 years after adoption of the ordinance).

Dissolution of Redevelopment Agencies

Trailer bills ABx1 26 and ABx1 27 were signed by the Governor of California on June 28, 2011, making certain changes to the HSC, including adding Part 1.8 (commencing with § 34161) ("Part 1.8") and Part 1.85 (commencing with § 34170) ("Part 1.85") to Division 24 of the HSC. The California Redevelopment Association and League of California Cities filed a lawsuit in the Supreme Court of California (*California Redevelopment Association, et al. v. Matosantos, et al.* (Case No. S194861)) alleging that ABx1 26 and ABx1 27 were unconstitutional. On December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding ABx1 26, invalidating ABx1 27, and holding that ABx1 26 may be severed from ABx1 27 and enforced independently. The Supreme Court generally revised the effective dates and deadlines for performance of obligations under HSC Part 1.85 arising before May 1, 2012 to take effect four months later while leaving the effective dates or deadline for performance of obligations under HSC Part 1.8 unchanged. Consistent with the applicable provisions of the HSC, the City Council elected to serve in the capacity of the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, (the "Successor Agency").





Further, on June 27, 2012, the Governor signed budget trailer bill AB 1484 into law, resulting in further procedural and substantive changes to the duties of and procedures to be followed by successor agencies, oversight boards, county auditor-controllers and the California Department of Finance (the "DOF"). This includes, but is not limited to, the manner in which the Successor Agency disposes of real property assets. Specifically, AB 1484 added HSC § 34191.5 that requires the Successor Agency to prepare a Long Range Property Management Plan (the "LRPMP") as a prerequisite to the disposition of real property assets.

Long Range Property Management Plan

Per the applicable provisions of the HSC, no later than six (6) months after a successor agency receives its Finding of Completion from the DOF (per HSC § 34179.7), the Successor Agency must submit its LRPMP to the Oversight Board and the DOF for approval. The LRPMP must include an inventory (with specified information) about each property, and address the use or disposition of each property. Permitted uses for the property pursuant to AB 1484 include:

1. Retention of the property for governmental use;
2. Retention of the property for future development;
3. Sale of the property; and
4. Use of the property to fulfill an enforceable obligation.

Upon DOF's approval of the LRPMP, the properties are to be placed in a Community Redevelopment Property Trust Fund administered by the Successor Agency in accordance with the approved LRPMP. If the LRPMP plan calls for use or liquidation (sale to obtain revenues) of a property for a project identified in an approved redevelopment plan, that property is to be transferred to the sponsoring community for that purpose. If the LRPMP calls for the liquidation of the property or use of revenues from the property for purposes other than a project identified in a redevelopment plan or other than to fulfill an enforceable obligation, the proceeds from the sale are to be distributed as property taxes to the taxing entities. A general outline of real property disposition procedure is included as Exhibit "A."

This LRPMP was prepared in compliance with those pertinent sections of the HSC that govern the LRPMP's prerequisites, content, and approval process. For ease of review, the pertinent sections of the HSC are included in Exhibit "B."

The Successor Agency received its Finding of Completion from the DOF on April 26, 2013 (Exhibit "C"). The LRPMP was approved by Resolution of the Successor Agency on _____, 2013 (Exhibit "D") and by Resolution of the Oversight Board on _____, 2013 (Exhibit "E").





II. SUMMARY OF SUCCESSOR AGENCY PROPERTIES

The Successor Agency has control of 13 parcels, all of which are located within the boundaries of the Agency's Project Area and are subject to the provision of the Agency's 1994 Merged Downtown and Midway Project Area Redevelopment Plan and subsequent 2002 amendment, the Agency's Five-Year Implementation Plan 2009/2010 through 2013/2014, and the City's 2006 General Plan, Title 17 Zoning Ordinance, and land use regulations.

The parcels have been divided into six (6) sites as summarized in the table below:

<i>Summary of Successor Agency Properties</i>						
Site No.	Site Reference (x) ¹	Address	Assessor Parcel No. ²	Zone ³	Lot Size (acres)	Permissible Use
1	Civic Center Parking Lot (1)	128 N San Geronimo Av	541-141-013	DC	0.27	Governmental Use
2	Chamber of Commerce (3)	60 E Ramsey Street	541-181-014, 021, & 023	DC	0.41	Governmental Use
3	Ramsey St Property (1)	646 W Ramsey St	540-191-008	DC	0.22	Future Development
4	Airport Property (2)	Westward Av	532-180-034 532-130-011	I	49.43	Future Development
5	Justice Center Office Complex (5)	W Ramsey St E Williams St	541-150-025 & 026 541-150-027, 028, & 029	DC	3.48	Future Development
6	Banning Ventures Property (1)	2301 W Ramsey St	538-162-016	HSC	1.45	Fulfill Enforceable Obligation

¹ Number of parcels

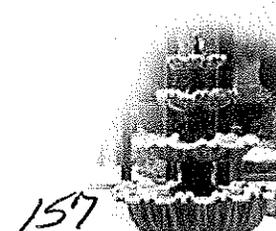
² See Exhibit "F" for Assessor Parcel Maps

³ See Exhibit "G" for zoning map

DC – Downtown Commercial

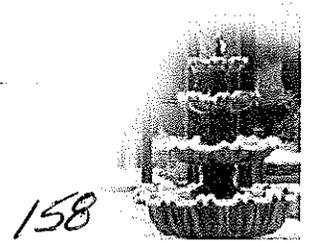
HSC – Highway Serving Commercial

I – Industrial





III. PROPERTY TO BE RETAINED FOR GOVERNMENTAL USE





Site Nos. 1 and 2 contain 4 parcels. These 4 parcels are proposed to be retained by the City of Banning for governmental use pursuant to HSC 34181(a).

Site No. 1
Civic Center Parking Lot
128 N San Geronio Av
APN 541-141-013



A. Permissible Use (HSC 34191.5(c)(2)):

Site No. 1 is the Civic Center Parking Lot property and is proposed to be retained by the City of Banning for governmental use pursuant to HSC 34181(a).

B. Acquisition of Property (HSC 34191.5 (c)(1)(A) and 34191.5(c)(1)(B)):

The Civic Center Parking Lot property was purchased in November 2008 for \$481,061. The acquisition was financed through a Note (the "2008-Note") secured by a Deed of Trust. The property was purchased for the development of a City Hall employee parking lot, thereby releasing existing City Hall parking for use by the clientele of the new State Courthouse, subject to the new State Courthouse being constructed and to address blight within the Project Area. The Successor Agency's book value is \$481,061. The property's estimated current value ("ECV") is zero.

C. Site Information (HSC 34191.5(c)(1)(C)):

The Civic Center Parking Lot property consists of one (1) 0.27-acre parcel (APN 541-141-013) located at 128 N. San Geronio Avenue. A 4,000 sf vacant 2-story building is located on the property. The property is zoned downtown commercial (DC) per the City's General Plan/Zoning Ordinance. The DC zoning designation applies to the City's traditional commercial core with primary uses as small scale commercial retail and office, services, governmental services, restaurants, and entertainment.

D. Estimated Current Value (HSC 34191.5 (c)(1)(D)):

The ECV of the Civic Center Parking Lot property is zero due to the encumbrance on the property of the remaining \$205,308 balance on the 2008-Note and the non-recoverable costs of environmental abatement and building demolition.





To determine an ECV for the Civic Center Parking Lot property, in June 2013 a sales comparable analysis was conducted through the National Data Collective.¹ The ECV was determined to be \$176,792. The ECV was then reduced by the balance owed on the 2008-Note and the non-recoverable estimated cost of site preparation. The cost to pay off the 2008-Note and to environmentally clean the property would have to be borne from the proceeds of the sale of the property which renders the property of no value.

Sales comparable analysis value	\$176,792
Balance of the 2008-Note	-\$205,308
Environmental analysis:	
Removal of lead based paint and asbestos	-\$ 9,500
Demolition:	-\$ 30,000
ECV =	\$0

In addition, it is estimated that development of the parking lot could cost approximately \$94,040. The parking lot will be used for employee parking.

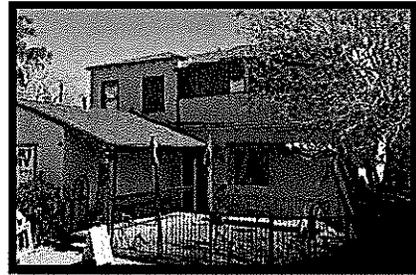
Local factors that may affect land value were not taken into consideration. Therefore, the actual value of the property may vary greatly from the ECV. The ECV is only a planning number and may not be relied upon as a basis for actual value.

E. Site Revenues (HSC 34191.5(c)(1)(E):

There is no revenue generated from the Civic Center Parking Lot property.

F. History of Environmental Contamination ((HSC 34191.5 (c)(1)(F)):

Although there is no history of environmental contamination, given the age of the building to be demolished, it is expected there will be lead based paint and asbestos contaminants to be abated and disposed of prior to building demolition.



G. Potential for Transit Oriented Development (TOD) and the Advancement of Planning Objectives of the Successor Agency (HSC 34191.5 (c)(1)(G)):

The potential exists for a TOD in conjunction with the Civic Center Parking Lot property. This property could become an integral part of the newly proposed Metro-link station to be located south of I-10 on San Gorgonio Avenue. The City continues to explore and plan for either bus or rail connection to the Metro-link system.

The Civic Center Parking Lot property advances the planning objectives of the City and the Successor Agency by facilitating ease of access to public services in the Downtown Core by creating a City Hall employee parking lot, thereby releasing existing City Hall parking for use by the clientele of the new Courthouse, and investing in public improvements that support businesses that create new, quality jobs (e.g. State Courthouse).

¹ www.ndc.com



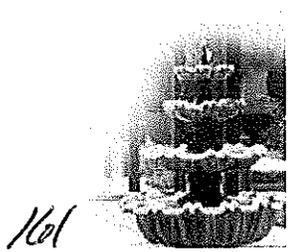


H. History of Previous Development Proposals and Activity (HSC 34191.5 (c)(1)(H)):

In 2007, funding for the Banning Courthouse was initiated through the State Budget Act of 2007. In November 2008, the State closed escrow for the acquisition of a 4.86-acre site on Ramsey Street, between Martin and East Williams Streets, from the City of Banning. In August 2008, the Agency purchased the Civic Center Parking Lot property to address the need for additional City Hall employee parking that will be necessitated once the Courthouse is completed and fully operational. The Courthouse is expected to be completed in the Fall of 2013.

I. Sale of Property:

The Civic Center Parking Lot property is proposed to be retained by the City of Banning for governmental use pursuant to HSC 34181(a), without cost for the reasons stated above.



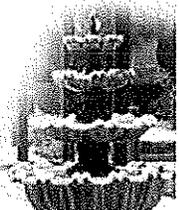


Site No. 2
Chamber of Commerce
60 E. Ramsey Street
APN 541-181-014, 021, & 023



- A. **Permissible Use (HSC 34191.5(c)(2)):**
Site No. 2 is the property occupied by Banning Chamber of Commerce (the "Chamber") and is proposed to be retained by the City of Banning for governmental use pursuant to HSC 34181(a).
- B. **Acquisition of Property (HSC 34191.5 (c)(1)(A) and 34191.5(c)(1)(B)):**
The property where the Chamber is located was purchased by the Agency in April 1996, for \$3,845 to alleviate blight within the Project Area. In 2005, the Chamber requested to house Chamber and Visitors' Center at this downtown location since it was being relocated in order to construct the Police Station. The Successor Agency's book value is \$3,845. The property's current estimated value (the "ECV") is zero.
- C. **Site Information (HSC 34191.5(c)(1)(C)):**
The Chamber property consists of three (3) parcels totaling 0.41 acres (APN 541-181-014, 021, & 023) located at 60 E. Ramsey Street. The Chamber occupies a 3,360 sf building on the site. The property is zoned downtown commercial (DC) per the City's General Plan/Zoning Ordinance. The DC zoning designation applies to the City's traditional commercial core with primary uses as small scale commercial retail and office, services, governmental services, restaurants, and entertainment.
- D. **Estimated Current Value (HSC 34191.5 (c)(1)(D)):**
The ECV of the Chamber property is considered to be zero due to the encumbrance of a long-term lease with the Banning Chamber. The Agency currently holds a 55-year lease (the "Lease") for \$1.00/year with an expiration date of June 14, 2055. The Chamber has sub-leased a portion of the building to the Southern California Gas Company (the "Gas Company") as a utility bill payment center.

The Chamber pays an annual rent of \$1/year for the use of the property. If the Agency were to terminate the Lease and the sub-lease without cause the Successor Agency would be liable for the Chamber and the Gas Company receiving compensation, reimbursement, assistance, including, but not limited to, the fair market value of real and personal property, loss of good will (i.e., bonus value of the lease), loss of profits, actual and reasonable expenses for moving a business, loss of tangible personal property as a result of moving the business, expenses incurred in searching for a replacement site for the business, expenses to reestablish the business at the new site, "in-lieu payments," and other such benefits under the California Relocation Assistance Act, Title 25 of the





California Code of Regulations, Article 1, Section 9 of the California Constitution, the California Eminent Domain law, or other similar local, state, or federal statute, ordinance, regulation, rule, or decisional law.

To determine an ECV for the Chamber property, in June 2013 a sales comparable analysis was conducted through the National Data Collective. The ECV was determined to be \$268,462. The ECV was then reduced by the cost of relocating the Chamber as noted above. The cost to relocate the Chamber would have to be borne from the proceeds of the sale of the property which renders the property of no value.

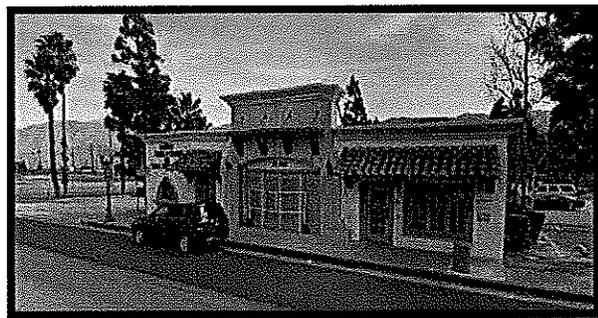
Sales comparable analysis value \$268,462

Cost for compensation, reimbursement, assistance, including, but not limited to, the fair market value of real and personal property, loss of good will (i.e., bonus value of the lease), loss of profits, actual and reasonable expenses for moving a business, loss of tangible personal property as a result of moving the business, expenses incurred in searching for a replacement site for the business, expenses to reestablish the business at the new site, "in-lieu payments," and other such benefits under the California Relocation Assistance Act, Title 25 of the California Code of Regulations, Article 1, Section 9 of the California Constitution, the California Eminent Domain law, or other similar local, state, or federal statute, ordinance, regulation, rule, or decisional law. Estimated compensation to exceed \$10 million

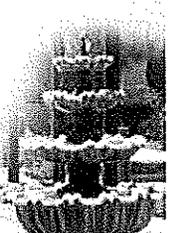
ECV= \$0

Local factors that may affect land value were not taken into consideration. Therefore, the actual value of the property may vary greatly from the ECV. The ECV is only a planning number and may not be relied upon as a basis for actual value.

E. Site Revenues (HSC 34191.5(c)(1)(E)):
The City and the Banning Chamber of Commerce, a California nonprofit corporation, have been party to the Lease since June 14, 2005. Since 2005, approximately \$8.00 has been received by the Agency. There is no contractual agreement for the use of the \$1.00 annual lease payment.



F. History of Environmental Contamination ((HSC 34191.5 (c)(1)(F)):
There is no history of environmental contamination.





G. Potential for Transit Oriented Development (TOD) and the Advancement of Planning Objectives of the Successor Agency (HSC 34191.5 (c)(1)(G)):

As the City continues to explore and plan for either bus or rail connection to the Metro-link system, there may be potential to partner with the Chamber on a future TOD in the downtown area.

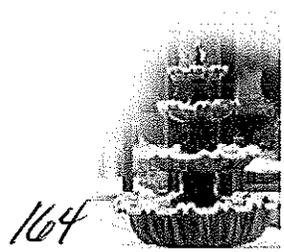
This property, being occupied by the Chamber, advances the planning objectives of the City and the Successor Agency by facilitating the ease of which businesses access the Chamber's services in the Downtown Core. The Chamber is considered a major partner with the City in the retention, expansion, and attraction of businesses. The planning objectives to enhance and grow the City's economy are spurred on by the Chamber as they support the economic development and tourism efforts of the City and the region.

H. History of Previous Development Proposals and Activity (HSC 34191.5 (c)(1)(H)):

The Chamber was located at 125 E. Ramsey Street for many years until, in 2005, when the City needed the property to construct a new police station. At that point in time, the Agency relocated the Chamber to its current location and a 55-year lease was provided to the Chamber in lieu of paying for relocation costs. The Chamber has served the City in its current location for the past 8 years.

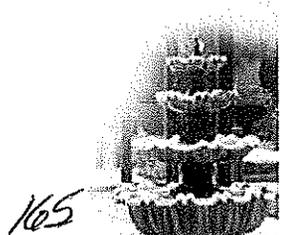
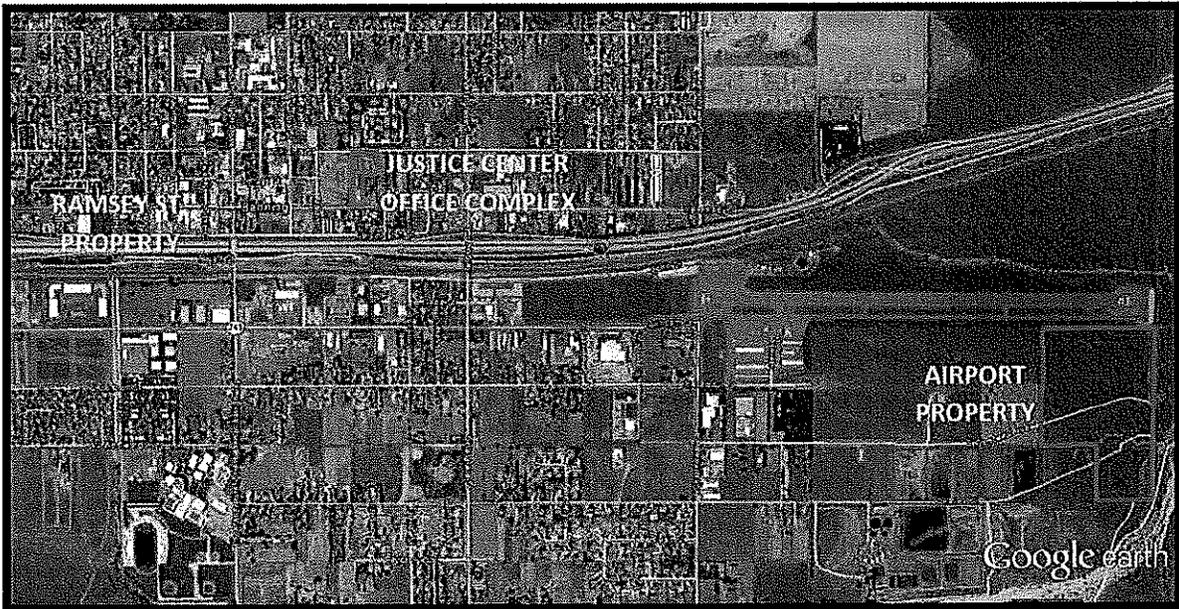
I. Sale of Property:

The Chamber property is proposed to be retained by the City of Banning for governmental use pursuant to HSC 34181(a), without cost for the reasons stated above.





IV. PROPERTY TO BE RETAINED FOR FUTURE DEVELOPMENT





Site Nos. 3, 4, and 5 contain a total of 8 parcels. These 8 parcels are proposed to be retained by the City for future development pursuant to HSC 34191.5(c)(2).

Site No. 3
Ramsey St. Property
646 W. Ramsey Street
APN 540-191-008



- A. **Permissible Use (HSC 34191.5(c)(2)):**
Site No. 3 is the Ramsey St. Property and is proposed to be retained by the City of Banning for future development pursuant to HSC 34191.5(c)(2).
- B. **Acquisition of Property (HSC 34191.5 (c)(1)(A) and 34191.5(c)(1)(B)):**
The Ramsey St. Property was acquired in July 2002 for \$25,896 to assist with the elimination of blight in the downtown. The Successor Agency's book value is \$25,896. The property's current estimated value (the "ECV") is \$144,305.
- C. **Site Information (HSC 34191.5(c)(1)(C)):**
The Property consists of one (1) 0.22-acre parcel (APN 540191-008) located at 676 W. Ramsey St. The Property is zoned downtown commercial (DC) per the City's General Plan/Zoning Ordinance. The DC zone applies to the City's traditional commercial core with primary land uses aimed towards small scale commercial retail and office, services, governmental services, restaurants, and entertainment.
- D. **Estimated Current Value (HSC 34191.5 (c)(1)(D)):**
To determine an ECV for the Ramsey St. Property, in June 2013 a sales comparable analysis was conducted through the National Data Collective. The ECV was determined to be \$144,305.
- E. **Site Revenues (HSC 34191.5(c)(1)(E)):**
No revenue is generated from the Ramsey St. Property.
- F. **History of Environmental Contamination ((HSC 34191.5 (c)(1)(F)):**
There is no history of environmental contamination.
- G. **Potential for Transit Oriented Development (TOD) and the Advancement of Planning Objectives of the Successor Agency (HSC 34191.5 (c)(1)(G)):**
There is no potential for a TOD in conjunction with Ramsey St. Property.





The retention of the Ramsey St. Property for future development advances the planning objectives of the City and the Successor Agency by controlling the development of this property to maintain the goal to create pedestrian friendly circulation within the downtown area and keep to the character of the downtown with small scale commercial retail and office uses, services, restaurants, and entertainment retail thus alleviating the existing blight in the area.

H. History of Previous Development Proposals and Activity (HSC 34191.5 (c)(1)(H)):
None.

I. Sale of Property:

The City proposes to issue an RFP in accordance with the Successor Agency's policies and procedures for property disposition located in Exhibit "A" for the future sale and development of the Ramsey St. Property.

The ECV is \$144,305.

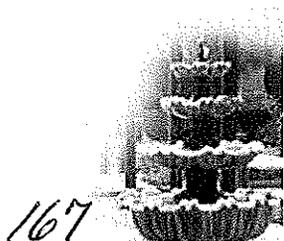
Date of estimated current value – July 2013

Value Basis – The ECV was determined by a sales comparable analysis using the National Data Collective. The ECV is \$144,305.

Local factors that may affect land value were not taken into consideration. Therefore, the actual value of the property may vary greatly from the ECV. The ECV is only a planning number and may not be relied upon as a basis for actual value.

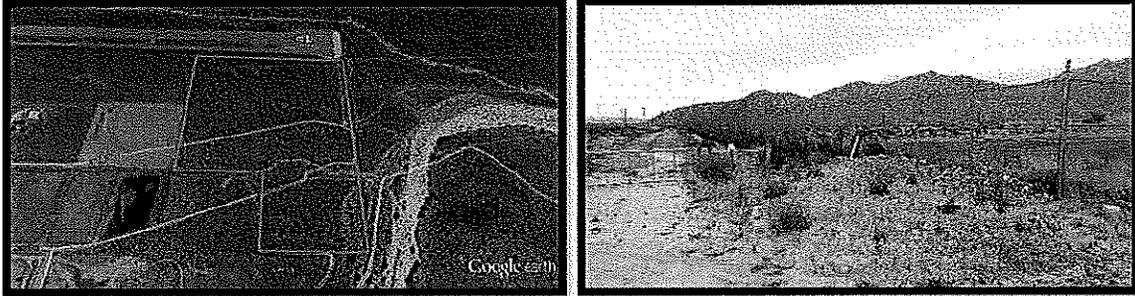
Proposed sale date – To be determined and subject to the Successor Agency's implementation of its policies and procedures for property disposition as shown in Exhibit "A."

Proposed sale value – To be determined and subject to a fair market appraisal conducted by a licensed appraiser. Any net proceeds of the sale would be used for enforceable obligations or distributed as property tax to the taxing entities.





Site No. 4
Airport Property
Westward Avenue
APN 532-130-011
APN 532-180-034



A. Permissible Use (HSC 34191.5(c)(2)):

Site No. 4 is the Airport Property and is proposed to be retained by the City for a future development with the Morongo Band of Mission Indians to create an “Inland Port” in conjunction with the City owned Banning Airport property and Tribal lands.

B. Acquisition of Property (HSC 34191.5 (c)(1)(A) and 34191.5(c)(1)(B)):

The Airport Property was purchased in October and December 2007 for a total of \$3,282,770. The property’s book value is \$3,282,770. The estimated current value (“ECV”) is \$644,749.

C. Site Information (HSC 34191.5(c)(1)(C)):

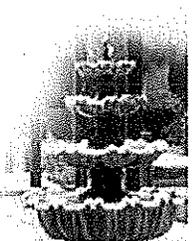
The Airport Property consists of two (2) parcels (APN 532-130-011 and APN 532-180-034) totaling 49.43 acres and are locate adjacent to and southeast of the Banning Airport. In the City’s General Plan/Zoning Ordinance, the property is zoned Industrial (I). Land uses in this zone are directed towards light and medium intensity manufacturing operations, warehousing and distribution, mini-storage, and associated offices; commercial recreation facilities are also appropriate along with auto storage and repair.

In addition, due to the type of development proposed, it is possible a portion of this property may be re-zoned to Airport Industrial (AI). Land uses in AI must be focused on airport-related and transportation-related functions, including machining, manufacturing, warehousing, flight schools, restaurants, and office uses. Aircraft maintenance, repair, and catering services are also appropriate.

D. Estimated Current Value (HSC 34191.5 (c)(1)(D)):

In June 2013 a sales comparable analysis was conducted through the National Data Collective to determine an ECV for the Airport Property of \$644,749.

Local factors that may affect land value were not taken into consideration. Therefore, the actual value of the property may vary greatly from the ECV. The ECV is only a planning number and may not be relied upon as a basis for actual value.





E. Site Revenues (HSC 34191.5(c)(1)(E)):

There is no revenue generated from the Airport Property.

F. History of Environmental Contamination ((HSC 34191.5 (c)(1)(F)):

There is no history of environmental contamination.

G. Potential for Transit Oriented Development (TOD) and the Advancement of Planning Objectives of the Successor Agency (HSC 34191.5 (c)(1)(G)):

There is no potential for a TOD in conjunction with the Airport Property.

The retention of the Airport Property for future development advances the planning objectives of the City and the Successor Agency as found in the 5-Year Implementation Plan and 2006 General Plan. Those objectives are: i) managing the industrial development of the Airport Property surrounding the Banning Airport; ii) addressing physical and economic blight from inadequate public improvements; iii) creating an industrial base convenient to the railroad and airport, which provides quality jobs for City residents; iv) providing for land uses related to and compatible with the airport; v) developing the under-utilized assets surrounding the airport; vi) tapping into the economic development opportunities that the Airport Property affords the City; vii) capitalizing on the Municipal Airport to attract businesses to the City; and viii) taking advantage of economic partnership opportunities with the Morongo Band of Mission Indians (the "Tribe") to expand and enhance the function of the airport and the Airport Property.

The future development of the Airport Property is crucial to the continued industrial development of the City and will provide the taxing entities with future taxing benefits upon disposition of the property to a developer and increasing property taxes revenue as the development is completed.

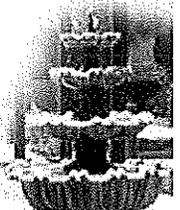
H. History of Previous Development Proposals and Activity (HSC 34191.5 (c)(1)(H)):

Lands surrounding the airport have a great potential for industrial development. These lands are owned by private parties, the City, Riverside County, and the Tribe. The City has also conferred with the Tribe regarding potential joint venture opportunities for commercial/industrial development on these lands.

Currently the City is negotiating an Exclusive Right to Negotiate Agreement ("ERNA") with a developer for the Airport Property to develop an Inland Port. The proposed development includes both Successor Agency parcels and the Banning Municipal Airport parcel. The negotiations include the following factors:

The Proposal

"...*The Site:* The City owns three (3) certain parcels of land located immediately east of Hathaway Street and along Barbour Avenue, Banning, California, which is more particularly described in Exhibit "A" hereto (the "Site"). The Site consists of (i) the Banning Municipal Airport (127.15 acres) that is improved as a municipal airstrip (the "Airport Parcel"), and (ii) two (2) adjacent parcels (39 acres and 20 acres, respectively) that are partially improved (the "Industrial Parcels"). The Airport Parcel has a General Plan designation of "Public Facilities" and a Zoning designation of "PF-A." The Industrial Parcels have a General Plan and Zoning designation of "Industrial." The Airport Parcel includes 5,200 feet of runway, one (1) terminal building, one (1) facility capable of housing



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a fixed base operator, six (6) T-hangers, three (3) conventional hangers, and fueling facilities.

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

- Provides for a land use and infrastructure plan that will support the creation of a major job center in the City;
- Establish Banning as a prime location for the logistics industry;
- Provides a balanced approach to the City's fiscal viability, economic expansion and environmental integrity;
- Significantly improves the City's jobs to housing balance; and
- Provides new, local construction jobs.

Proposed Project: In order to achieve the above-described goal of enhancing Site use, the City and Developer are considering a conceptual plan to design and construct a "logistics center" upon the Site and certain adjacent property as described as the "Project." The Project contemplates design and construction of at least 1,000,000 square feet of warehouse and trailer/container storage space serving cargo and bulk freight distribution; manufacturing; retail store space; office space and secondary business facilities serving the intermodal logistics center (such as restaurant and fueling services). The Project is proposed to provide substantial economic and employment opportunities for the community, with a goal of generating at least 1,300 new jobs. The Project shall maintain highest standards of development, including "Cal-Green" and LEED building standards, strict adherence to building codes, best practices for environmental protection, energy efficiency, water conservation, and reduced greenhouse gas emissions. The Project will also include necessary street and utility infrastructure."

I. Sale of Property:

If the ERNA is not signed, then the City proposes to issue an RFP in accordance with the Successor Agency's policies and procedures for property disposition located in Exhibit "A" for the future disposition and development of the Ramsey St. Property.

The ECV is \$644,749

The following process was used in determining the ECV of the Airport Property:

Date of estimated current value – June 2013





Value Basis – The ECV was determined by a sales comparable analysis using the National Data Collective. The ECV is \$644,749.

Local factors that may affect land value were not taken into consideration. Therefore, the actual value of the property may vary greatly from the ECV. The ECV is only a planning number and may not be relied upon as a basis for actual value.

Proposed sale date – To be determined and subject to the Successor Agency's implementation of its policies and procedures for property disposition as shown in Exhibit "A."

Proposed sale value – To be determined and subject to a fair market appraisal conducted by a licensed appraiser. Any net proceeds of the sale would be used for enforceable obligations or distributed as property tax to the taxing entities.

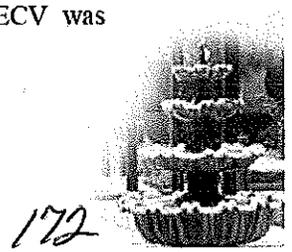




Site No. 5
Justice Center Office Complex
W. Ramsey Street
APN 541-150-025 & 026
E. Williams Street
APN 541-150-027, 028, & 029



- A. Permissible Use (HSC 34191.5(c)(2)):**
Site No. 6 is the Justice Center Office Complex property and is proposed to be retained by the City of Banning for future development pursuant to HSC 34191.5(c)(2).
- B. Acquisition of Property (HSC 34191.5 (c)(1)(A) and 34191.5(c)(1)(B)):**
The Justice Center Office Complex property was acquired in April 2008 for \$3,786,678. One parcel was subsequently sold in 2010 for \$2,420,287 leaving a book value of \$1,366,391 for the remaining five (5) parcels. The property was acquired to alleviate blight in the downtown. The estimated current value ("ECV") is \$461,415.
- C. Site Information (HSC 34191.5(c)(1)(C)):**
The Justice Center Office Complex property consists of five (5) parcels totaling 3.49 acres (APN 541-150-025, 026, 027, 028, & 029) situated on W. Ramsey Street and W. Williams Street. In the City's General Plan/Zoning Ordinance, the property is zoned downtown commercial (DC). The DC zoning designation applies to the City's traditional commercial core with primary uses as small scale commercial retail and office, services, governmental services, restaurants, and entertainment.
- D. Estimated Current Value (HSC 34191.5 (c)(1)(D)):**
To determine an ECV for the Justice Center Office Complex property, in July 2013 a sales comparable analysis was conducted through the National Data Collective. The ECV was determined to be \$461,415.





Local factors that may affect land value were not taken into consideration. Therefore, the actual value of the property may vary greatly from the ECV. The ECV is only a planning number and may not be relied upon as a basis for actual value.

E. Site Revenues (HSC 34191.5(c)(1)(E)):

There is no revenue generated from the Justice Center Office Complex property.

F. History of Environmental Contamination ((HSC 34191.5 (c)(1)(F)):

There is no history of environmental contamination.

G. Potential for Transit Oriented Development (TOD) and the Advancement of Planning Objectives of the Successor Agency (HSC 34191.5 (c)(1)(G)):

There is no potential for a TOD in conjunction with Justice Center Office Complex property.

The future development of the Justice Center Office Complex property advances the planning objectives of the City and the Successor Agency by enhancing the community image, keeping to the character of the downtown with mixed use (residential land uses in combination with commercial businesses, are also encouraged), small scale commercial retail and office uses, services, restaurants, and entertainment retail thus alleviating the existing blight in the area. The community benefits that will result from guiding this development include, but are not limited to, job creation, increased employment opportunities for the City's residents, higher paying jobs, and increased property values.

H. History of Previous Development Proposals and Activity (HSC 34191.5 (c)(1)(H)):

The potential for this property is market-driven and it is predicted that office demand/operations in the Inland Empire will record additional improvement this year expanding office jobs by 5,900.² The development of the Justice Center Office Complex property will act as an economic catalyst to stimulate office, retail related, and service uses.

I. Sale of Property:

The City proposes to issue an RFP in accordance with the Successor Agency's policies and procedures for property disposition located in Exhibit "A" for the future sale and development of the Ramsey St. Property.

The ECV is \$461,415.

The following process was used in determining the ECV of the Ramsey St. Property:

Date of estimated current value – June 2013

Value Basis – The ECV was determined by a sales comparable analysis using the National Data Collective. The ECV is \$461,415.

Local factors that may affect land value were not taken into consideration. Therefore, the actual value of the property may vary greatly from the ECV. The ECV is only a planning number and may not be relied upon as a basis for actual value.

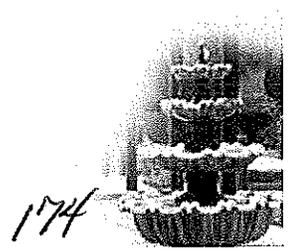
² 2013 Market Outlook, Marcus & Millichap





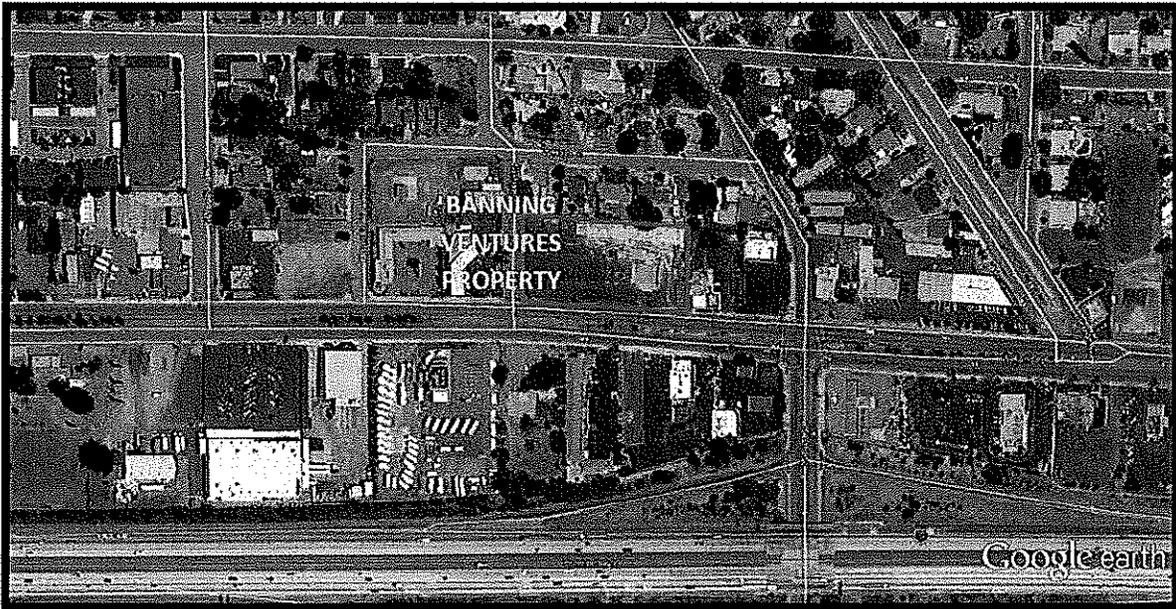
Proposed sale date – To be determined and subject to the Successor Agency's implementation of its policies and procedures for property disposition as shown in Exhibit "A."

Proposed sale value – To be determined and subject to a fair market appraisal conducted by a licensed appraiser. Any net proceeds of the sale would be used for enforceable obligations or distributed as property tax to the taxing entities.





V. PROPERTY TO BE USED TO FULFILL AN ENFORCEABLE OBLIGATION





Site No. 6 is to be used to fulfill an enforceable obligation HSC 34191.5(c)(2).

Site No. 6
Banning Ventures Property
2301 W. Ramsey Street
APN 538-162-016



A. Permissible Use (HSC 34191.5(c)(2)):

Site No. 6 is the Banning Ventures Property and is to be sold to fulfill an enforceable obligation of the Successor Agency (pursuant to HSC 34191(c)(2)) ROPS Line Item #9 – Note Payable/DeZorzi – Property Acquisition Trust Deed; balance as shown on ROPS 13-14A: \$1,017,138.

B. Acquisition of Property (HSC 34191.5 (c)(1)(A) and 34191.5(c)(1)(B)):

The Banning Ventures Property was purchased on July 13, 2009 for \$1,020,000. The acquisition was financed through a Note (the “2009-Note”) secured by a Deed of Trust. The Property was purchased to alleviate blight within the Project Area. The property’s current estimated value (the “ECV”) is zero.

C. Site Information (HSC 34191.5(c)(1)(C)):

The Banning Ventures Property consists of one (1) 1.45-acre parcel (APN 541-162-016) located at 2301 W. Ramsey Street. In the City’s General Plan/Zoning Ordinance, the Property is zoned Highway Serving Commercial (HSC). The HSC zone allows land uses geared toward the Interstate 10 traveler, including restaurants, hotels and motels, auto related retail, repair and services, including gas stations, convenience stores and similar uses.

D. Estimated Current Value (HSC 34191.5 (c)(1)(D)):

The ECV of the Banning Ventures Property is zero due to the encumbrance on the Property of the remaining \$1,017,138 of the 2009-Note.





To determine an ECV for the Banning Ventures Property, in June 2013 a sales comparable analysis was conducted through the National Data Collective. The ECV was determined to be \$949,437. The ECV was then reduced by the balance owed on the 2009-Note.

Sales comparable analysis value	\$ 949,437
Balance of the 2009-Note	-\$1,017,138
ECV=	\$0

Local factors that may affect land value were not taken into consideration. Therefore, the actual value of the Property may vary greatly from the ECV. The ECV is only a planning number and may not be relied upon as a basis for actual value.

E. Site Revenues (HSC 34191.5(c)(1)(E)):

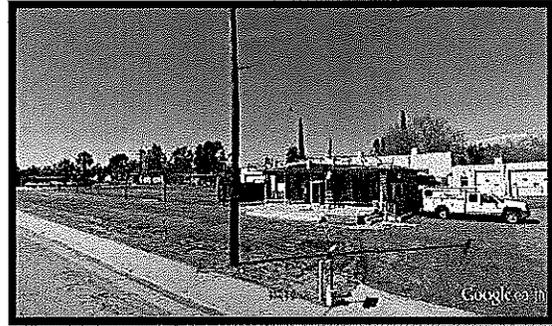
There are no site revenues generated from the Banning Ventures Property. The August 2011 Lease Agreement between the City, Agency, and Banning Ventures to develop a Project on the 1.45-acre parcel was signed as a 10-year rent free lease with an Option to Purchase. At the end of 10 years, if the Lessee has not exercised the Option to Purchase, the Lessee and Lessor may, without obligation, negotiate a new lease to continue Lessee's occupation of the premises.

F. History of Environmental Contamination ((HSC 34191.5 (c)(1)(F)):

There is no history of environmental contamination.

G. Potential for Transit Oriented Development (TOD) and the Advancement of Planning Objectives of the Successor Agency (HSC 34191.5 (c)(1)(G)):

No potential exists for a TOD in conjunction with the Banning Ventures Property.



The Banning Ventures Property advances the planning objectives of the City and the Successor Agency by facilitating the transfer of this Property to Banning Ventures, LLC, the alleviation of blight in the project area, and the creation of quality jobs.

H. History of Previous Development Proposals and Activity (HSC 34191.5 (c)(1)(H)):

- 2009, July 29th** The Agency acquired APN 541-162-016 from Patrick Michael DeZorzi (2301 W. Ramsey Street) in an "as is" condition and subject to a deed of trust securing a first lien note in an amount of \$1,020,000.
- 2011, March 8th** The Agency and the City entered into a Property transfer agreement transferring certain properties to the City and obligating the City to undertake certain redevelopment activities.
- 2011, August 24th** Lease Agreement, which includes an option to purchase, (the "Lease/Option Agreement") between City/Agency/Banning Ventures to develop Project on a 1.45-acre parcel was signed.



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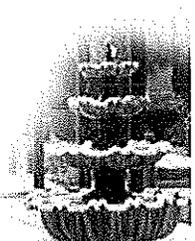
The Project

The Project consists of the Lessee's construction of new improvements on the premises and/or Lessee's rehabilitation of maintenance of existing improvements located upon the Premises, for the purpose of establishing and maintain a retail all-terrain and recreational vehicle supply and dealership business be owned by the Lessee. The Lessor desires to convey the Premises to Lessee in order to complete such Project build-out and maintenance.

Balance of 2009-Note (ROPS 13-14A Line Item #9) \$1,017,138.

Sale of Property:

The sale of the Banning Ventures Property will take place in accordance with Lease/Option Agreement terms and conditions.





VI. PROPERTY INVENTORY PER HSC 34191.5.(c)(1)

Site No	Property Type	HSC 34191.5 (c)(1)(A)				Sale of Property		HSC 34191.5 (c)(1)(B)				HSC 34191.5 (c)(1)(C)				HSC 34191.5 (c)(1)(D)		HSC 34191.5 (c)(1)(E)		HSC 34191.5 (c)(1)(F)		HSC 34191.5 (c)(1)(G)		HSC 34191.5 (c)(1)(H)	
		Permissible Use	Date Acq'd	Value When Acq'd	Est. Current Value (ECV)	Value Basis	Date of ECV	Sale Value	Sale Date	Purpose Acq'd	Address	APN	Lot Size (ac)	Zoning	ECV	Est. of Income/Revenue (Annual)	Contract req'd for use of income/revenue	History ERM Contamination	TOD	Adv of SA Planning Objectives	Previous develop. Proposals / activities				
1	RP (Fee)	Government	Nov 2008	\$481,061	\$0	Sales Comps	Jun 2013	N/A	N/A	Employee Parking	128 N San Geronimo Av	0.27	DC	\$0	None	None	Nb	Yes	Yes	Nb					
2	RP (Fee)	Government	April 1996	\$3,845	\$0	Sales Comps	Jun 2013	N/A	N/A	Alleyway EIGHT	541-181-014 60 E Ramsey St	0.17 0.07	DC	\$0	None	None	Nb	Yes	Yes	Nb					
3	RP (Fee)	Future Development	Jul 2002	\$25,886	\$44,305	Sales Comps	Jun 2013	N/A	N/A	Alleyway EIGHT	648 W Ramsey St	0.22	DC	\$144,305	None	None	Nb	No	Yes	Nb					
4	RP (Fee)	Future Development	Dec 2007	\$3,282,770	\$84,749	Sales Comps	Jul 2013	TBD	TBD	Alleyway EIGHT	532-180-034 Westward Av	10.33 38.10	1	\$844,749	None	None	Nb	No	Yes	Yes					
5	RP (Fee)	Future Development	Apr 2008	\$1,386,391	\$461,415	Sales Comps	Jul 2013	TBD	TBD	Alleyway EIGHT	541-150-026 W Ramsey St E Williams St 541-150-028 541-150-028	0.22 1.05 0.80 0.18	DC	\$461,415	None	None	Nb	No	Yes	Yes					
6	RP (Fee)	Full Enforceable Obligation	Jul 2008	\$1,020,000	\$0	Sales Comps	Jun 2013	N/A	N/A	Alleyway EIGHT	2301 W Ramsey St	1.45	HSC	\$0	None	None	Nb	No	Yes	Yes					

* Local factors that may affect land value were not taken into consideration. Therefore, the actual value of the property may vary greatly from the ECV. The ECV is only a planning number and may not be relied upon as a basis for actual Value.

† TBD - To Be Determined



Exhibit A – Successor Agency/City Property Disposition Procedures

The following is only a general outline for the Purchase & Sale and Request for Proposals procedures of the Successor Agency for the disposition of real property. Property to be sold will be in accordance with Successor Agency Policies and Procedures and property to be retained for future development will be developed in accordance with City Policies and Procedures. It is anticipated that the Successor Agency will adopt policies and procedures that are more specific during the implementation phase of the LRPMP.

I. PURCHASE AND SALE PROCEDURES

These procedures apply only to those properties for which the Successor Agency will sell. These procedures do not apply to those properties that will be retained for future development or to fulfill an enforceable obligation.

1. Post notice on Successor Agency website:
“All persons interested in receiving solicitations for the disposition of Successor Agency property please email “xyz@cityofthefuture.org” (a newly established email for the disposition of property) with your contact information and “**Purchase and Sale of Successor Agency Property**” in the Subject line.”
2. Successor Agency will provide written solicitations for the sale of its real estate assets, which may be a single parcel or a grouping of parcels (the “Property”). Such formal solicitations will include, but not be limited to:
 - a. APN(s)
 - b. Property location
 - c. Zoning
 - d. Acreage
 - e. Listing Price (The listing price shall either be (i) not less than fair market value under an appraisal procured by the Successor agency or (ii) another amount approved for such purpose by the Oversight Board
 - f. Purchase Price shall be all cash at close of escrow, no seller financing.
 - g. Deadline to receive offers (prior to selection, offers are confidential)
 - h. Offer submittal guidelines:
 - i. All offers must be in writing (California Association of Realtor forms are acceptable);
 - ii. Successor Agency will provide courtesy to brokers equal to one-half of the customary commission if the ultimate buyer is represented by said real estate broker as buyer’s broker at the time the original offer is submitted.
 - iii. **Provided that allowance of brokerage commissions will be subject to Oversight Board approval in each case;**
 - iv. Approval of each sale may be subject to DOF approval;
 - v. Type of financing identified (i.e., buyer’s cash, buyer’s loan proceeds, etc.);
 - vi. All buyers are to be listed – no silent partners; and
 - vii. Offers will be reviewed for conflict of interest between offeror and Successor Agency/City officials, staff and consultants.
 - i. Some properties for sale consist of multiple parcels. Only offers that include all parcels identified by Successor Agency on a particular site may be accepted, i.e., no less than whole purchases.
3. Method of Solicitations:
 - a. Property posting
 - b. Successor Agency website posting



- c. Local real estate brokers
 - d. All persons requesting solicitations
 - e. Workshops and/or e-mail notifications
4. All property sales are in an “AS IS, WHERE IS” condition.
 5. The Successor Agency will be reimbursed from the sale proceeds of the property for any costs related to the appraisal, escrow and title fees (cost of CLTA policy only), and any other costs associated with the sale.
 6. An offer may be rejected if it does not meet the Successor Agency’s price threshold. Acceptance of a purchase and sale offer is subject to approval of the Successor Agency’s Board of Directors.

II. REQUEST FOR PROPOSAL PROCEDURES

Costs incurred by the Successor Agency and/or the City in the implementation of these Disposition Procedures shall be treated as an Enforceable Obligation for purposes of the Recognized Obligation Payments Schedule (“ROPS”) of the Successor Agency to be recovered from land sales proceeds. The City shall provide the Successor Agency an estimate of such costs at such times and in a form sufficient for the Successor Agency to include such costs on one or more ROPS, as appropriate. Included in such costs are: staff time in the performance of such duties; costs and fees of consultants, attorneys, appraisers, title insurers and escrow; costs and fees in connection with the disposition of property(ies), such as unpaid and outstanding tax liens or judgments and other costs incurred in order to deliver merchantable title. Where possible, the Successor Agency is to recover costs at the time of close of escrow.

A) INTENT AND PURPOSE

A Request for Proposals (“RFP”) will be prepared by the Successor Agency and posted to the City’s website, and/or sent to developers or parties that have requested such RFPs, and other developers or parties at the Successor Agency’s discretion. The number of properties as to which an RFP is requested is subject to the discretion of the Successor Agency.

B) PROPOSAL SUBMITTAL

1. Interested parties may submit a development proposal by the deadline specified in the RFP or other announcement.
2. Proposal requirements may include, but not be limited to, the following:
 - a. The proposed total consideration for the property(ies) and information supporting the offer price;
 - b. Any proposed alterations to the terms and conditions of sale;
 - c. Construction and development pro forma, a detailed site plan, a business/operating plan, developer qualifications, experience and references, a narrative description of the market support for the proposed project, an operating pro forma, as applicable, and an explanation of the economic benefits of the proposed project to the City, other affected taxing agencies and the community;
 - d. The proposed uses are to conform to the requirements, intent, goals, and objectives of the City General Plan/Zoning Ordinance, other applicable development standards, and other applicable federal, state and local laws, codes and regulations.
 - e. A statement that no financial assistance is being requested from any governmental agency in connection with the proposal, or a statement that financial assistance is being requested from a governmental agency in connection with the proposal, indicating the amount that will be requested, the anticipated timing for consideration of such request, and a description of any discretionary process required by the governmental agency from which assistance will be requested, together with an acknowledgment that conditioning a proposal upon receipt of assistance from a governmental agency may result in the rejection of such proposal;



3. Interested parties to provide such additional information as may be reasonably requested by Successor Agency.
4. Subsequent to review, applicants will be advised regarding the development proposals submitted complying with the requirements of the RFP or whether additional information is required.

C) PROPOSAL REVIEW

1. The Successor Agency will review all proposals received and determined by Successor Agency staff to be complete.
2. Among other things, the Successor Agency's review will consider the value of the asset in question being maximized as well as the proposal furthering the objectives of the Successor Agency's General Plan.
3. Nothing in these Procedures prohibits the Successor Agency or the City from requiring information that is in addition to the foregoing or obligate the Successor Agency in selecting any proposal. Neither the City nor the Successor Agency will bear any responsibility for the costs associated with preparing and submitting a proposal.

D) NEGOTIATING AGREEMENTS

The Successor Agency may enter into an Exclusive Right to Negotiate Agreement ("ERNA") with a selected project proponent. The purpose of the ERNA is to establish a time period during which the chosen applicant shall have the right to negotiate with the Successor Agency the terms and conditions of a sales and development contract. Therefore, a Disposition and Development Agreement may follow the ERNA if applicable.



Exhibit B – Health & Safety Code

HSC § 34191.1, reads as follows:

The provisions of this chapter shall apply to a City upon that agency's receipt of a finding of completion by the Department of Finance pursuant to Section 34179.7.

HSC § 34191.3, reads as follows:

Notwithstanding Section 34191.1, the requirements specified in subdivision (e) of Section 34177 and subdivision (a) of Section 34181 shall be suspended, except as those provisions apply to the transfers for governmental use, until the Department of Finance has approved a long-range property management plan pursuant to subdivision (b) of Section 34191.5, at which point the plan shall govern, and supersede all other provisions relating to, the disposition and use of the real property assets of the former redevelopment agency. If the department has not approved a plan by January 1, 2015, subdivision (e) of Section 34177 and subdivision (a) of Section 34181 shall be operative with respect to that City.

HSC § 34191.4, reads as follows:

The following provisions shall apply to any City that has been issued a finding of completion by the Department of Finance:

- (a) All real property and interests in real property identified in subparagraph (C) of paragraph (5) of subdivision (c) of Section 34179.5 shall be transferred to the Community Redevelopment Property Trust Fund of the City upon approval by the Department of Finance of the long-range property management plan submitted by the City pursuant to subdivision (b) of Section 34191.7 unless that property is subject to the requirements of any existing enforceable obligation.
- (b) (1) Notwithstanding subdivision (d) of Section 34171, upon application by the City and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created by the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes.

(2) If the oversight board finds that the loan is an enforceable obligation, the accumulated interest on the remaining principal amount of the loan shall be recalculated from origination at the interest rate earned by funds deposited into the Local Agency Investment Fund. The loan shall be repaid to the city, county, or city and county in accordance with a defined schedule over a reasonable term of years at an interest rate not to exceed the interest rate earned by funds deposited into the Local Agency Investment Fund. The annual loan repayments provided for in the recognized obligations payment schedules shall be subject to all of the following limitations:

(A) Loan repayments shall not be made prior to the 2013-14 fiscal year. Beginning in the 2013-14 fiscal year, the maximum repayment amount authorized each fiscal year for repayments made pursuant to this subdivision and paragraph (7) of subdivision (e) of Section 34176 combined shall be equal to one-half of the increase between the amount distributed to the taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 in that fiscal year and the amount distributed to taxing entities pursuant to that paragraph in the 2012-13 base year. Loan or deferral repayments made pursuant to this subdivision shall be second in priority to amounts to be repaid pursuant to paragraph (7) of subdivision (e) of Section 34176.

(B) Repayments received by the city, county or city and county that formed the redevelopment agency shall first be used to retire any outstanding amounts borrowed and owed to the Low and Moderate Income Housing Fund of the former redevelopment agency for purposes of the Supplemental Educational Revenue Augmentation Fund and shall be distributed to the Low and Moderate Income Housing Asset Fund established by subdivision (d) of Section 34176.

(C) Twenty percent of any loan repayment shall be deducted from the loan repayment amount and shall be transferred to the Low



and Moderate Income Housing Asset Fund, after all outstanding loans from the Low and Moderate Income Housing Fund for purposes of the Supplemental Educational Revenue Augmentation Fund have been paid.

- (c) (1) Bond proceeds derived from bonds issued on or before December 31, 2010, shall be used for the purposes for which the bonds were sold.
- (2) (A) Notwithstanding Section 34177.3 or any other conflicting provision of law, bond proceeds in excess of the amounts needed to satisfy approved enforceable obligations shall thereafter be expended in a manner consistent with the original bond covenants. Enforceable obligations may be satisfied by the creation of reserves for projects that are the subject of the enforceable obligation and that are consistent with the contractual obligations for those projects, or by expending funds to complete the projects. An expenditure made pursuant to this paragraph shall constitute the creation of excess bond proceeds obligations to be paid from the excess proceeds. Excess bond proceeds obligations shall be listed separately on the Recognized Obligation Payment Schedule submitted by the City.

(B) If remaining bond proceeds cannot be spent in a manner consistent with the bond covenants pursuant to subparagraph (A), the proceeds shall be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation

HSC §34191.5, reads as follows:

- (a) There is hereby established a Community Redevelopment Property Trust Fund, administered by the City, to serve as the repository of the former redevelopment agency's real properties identified in subparagraph (C) of paragraph (5) of subdivision (c) of Section 34179.5.
- (b) The City shall prepare a long-range property management plan that addresses the disposition and use of the real properties of the former redevelopment agency. The report shall be submitted to the oversight board and the Department of Finance for approval no later than six months following the issuance to the City of the finding of completion.

(c) The long-range property management plan shall do all of the following:

(1) Include an inventory of all properties in the trust. The inventory shall consist of all of the following information:

(A) The date of the acquisition of the property and the value of the property at that time, and an estimate of the current value of the property.

(B) The purpose for which the property was acquired.

(C) Parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.

(D) An estimate of the current value of the parcel including, if available, any appraisal information.

(E) An estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.

(F) The history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.

(G) A description of the property's potential for transit-oriented development and the advancement of the planning objectives of the City.

(H) A brief history of previous development proposals and activity, including the rental or lease of property.

(2) Address the use or disposition of all of the properties in the trust. Permissible uses include the retention of the property for governmental use pursuant to subdivision (a) of Section 34181, the retention of the property for future development, the sale of the property, or the use of the property to fulfill an enforceable obligation. The plan shall separately identify and list properties in the trust dedicated to governmental use purposes and properties retained for purposes of fulfilling an



enforceable obligation. With respect to the use or disposition of all other properties, all of the following shall apply:

(A) If the plan directs the use or liquidation of the property for a project identified in an approved redevelopment plan, the property shall transfer to the city, county, or city and county.

(B) If the plan directs the liquidation of the property or the use of revenues generated from the property, such as lease or parking revenues, for any purpose other than to fulfill

an enforceable obligation or other than that specified in subparagraph (A), the proceeds from the sale shall be distributed as property tax to the taxing entities.

(C) Property shall not be transferred to a City, city, county, or city and county, unless the long-range property management plan has been approved by the oversight board and the Department of Finance.

Note: HSC § 34191.2 does not exist and therefore is not included above.



Exhibit C – DOF Finding Of Completion



April 26, 2013

Ms. June Overholt, Administrative Services Director
City of Banning
99 East Ramsey Street
Banning, CA 92220-0998

Dear Ms. Overholt:

Subject: Request for a Finding of Completion

The California Department of Finance (Finance) has completed the Finding of Completion for the City of Banning Successor Agency.

Finance has completed its review of your documentation, which may have included reviewing supporting documentation submitted to substantiate payment or obtaining confirmation from the county auditor-controller. Pursuant to Health and Safety Code (HSC) section 34179.7, we are pleased to inform you that Finance has verified that the Agency has made full payment of the amounts determined under HSC section 34179.6, subdivisions (d) or (e) and HSC section 34183.5.

This letter serves as notification that a Finding of Completion has been granted. The Agency may now do the following:

- Place loan agreements between the former redevelopment agency and sponsoring entity on the ROPS, as an enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes per HSC section 34191.4 (b) (1). Loan repayments will be governed by criteria in HSC section 34191.4 (a) (2).
- Utilize proceeds derived from bonds issued prior to January 1, 2011 in a manner consistent with the original bond covenants per HSC section 34191.4 (c).

Additionally, the Agency is required to submit a Long-Range Property Management Plan to Finance for review and approval, per HSC section 34191.5 (b), within six months from the date of this letter.

Please direct inquiries to Andrea Scharffer, Staff Finance Budget Analyst, or Chris Hill, Principal Program Budget Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Bill Manis, Economic Development Director, City of Banning
Ms. Pam Elias, Chief Accountant, Property Tax Division, Riverside County
Auditor Controller
California State Controller's Office



*Successor Agency to the Banning
Community Redevelopment Agency
Long Range Property Management Plan
July 2013*

Exhibit D – Resolution of the Oversight Board



Exhibit E – Resolution of the Successor Agency Board

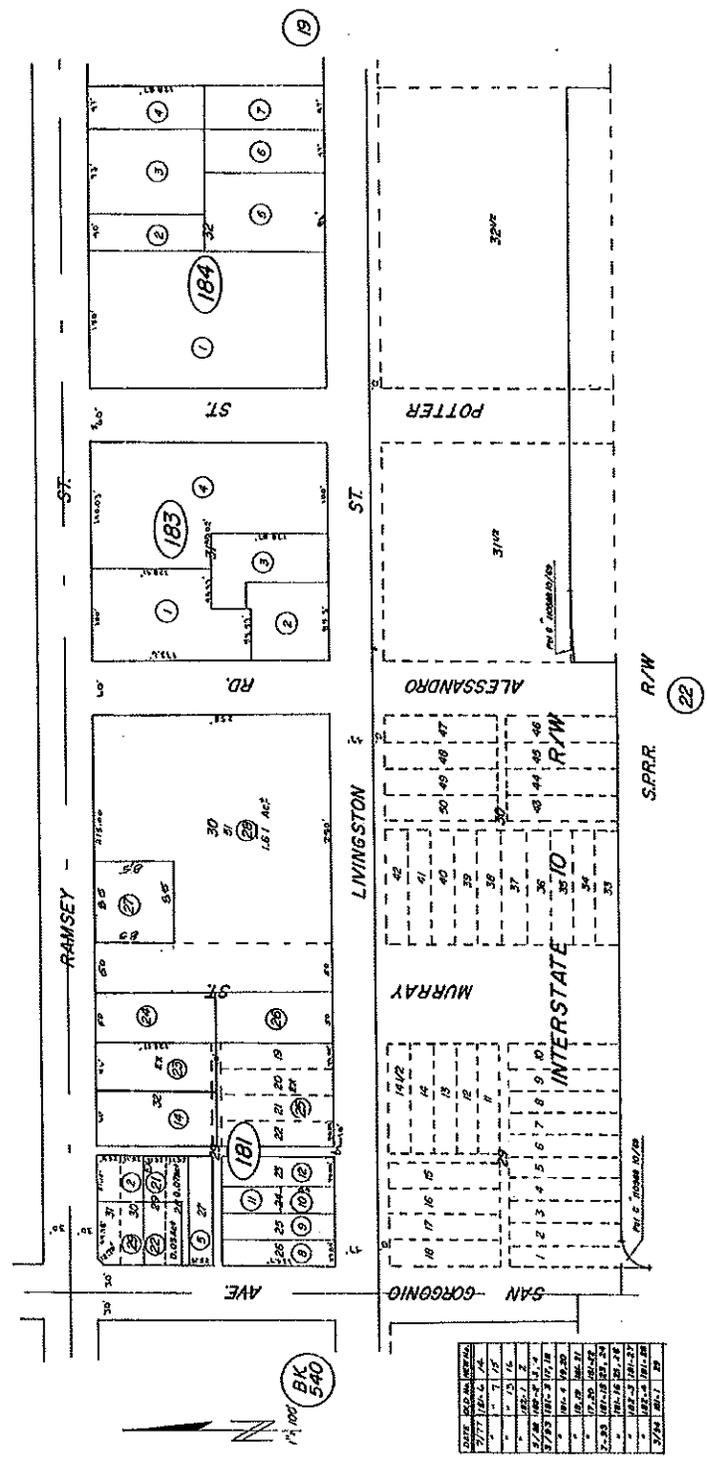


Exhibit F – Assessor Parcel Maps

THIS MAP IS FOR ASSESSMENT PURPOSES ONLY

POR. N.1/2 SW.1/4 SEC. 10, T. 3S., R. 1E.

541-18
24-5
T.C.A. 102



DATE	BOOK	PAGE	REMARKS
7/77	184-5	14	
1/78	184-5	15	
1/78	184-5	16	
1/78	184-5	17	
1/78	184-5	18	
1/78	184-5	19	
1/78	184-5	20	
1/78	184-5	21	
1/78	184-5	22	
1/78	184-5	23	
1/78	184-5	24	
1/78	184-5	25	
1/78	184-5	26	
1/78	184-5	27	
1/78	184-5	28	
1/78	184-5	29	
1/78	184-5	30	

ASSESSOR'S MAP BK 541 PG. 18
RIVERSIDE COUNTY, CALIF.

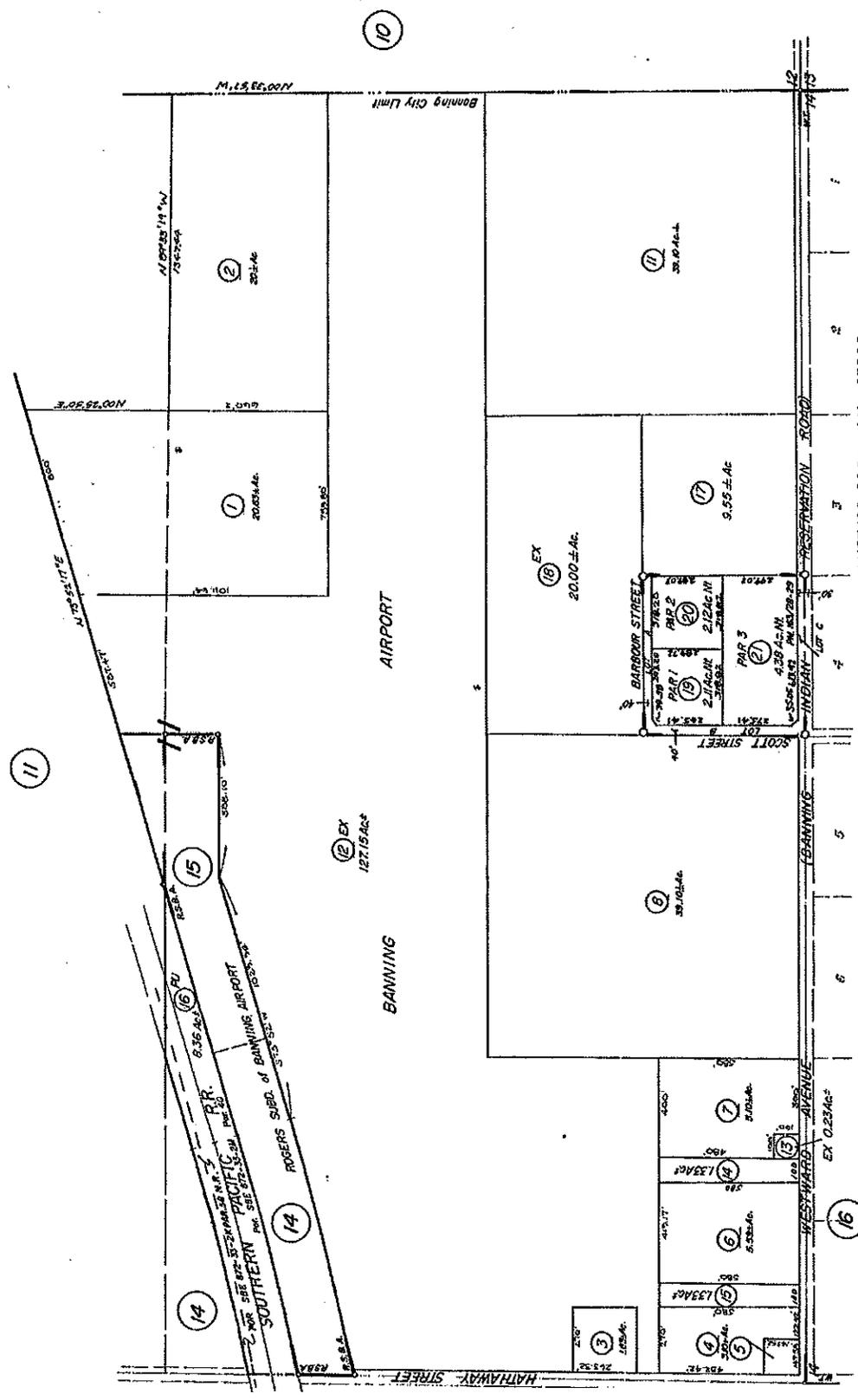
ME 9/44 SB. AMENDED MAP of the BANNING LAND COMPANY

192

THIS MAP IS FOR ASSESSMENT PURPOSES ONLY.

51/2 SEC. 11 T3S, R1E.

T.C.A. 104



ASSESSOR'S MAP EX. 532 PG. 13 RIVERSIDE COUNTY, CALIF.

PIM 63/28-29 parcel Map 23922

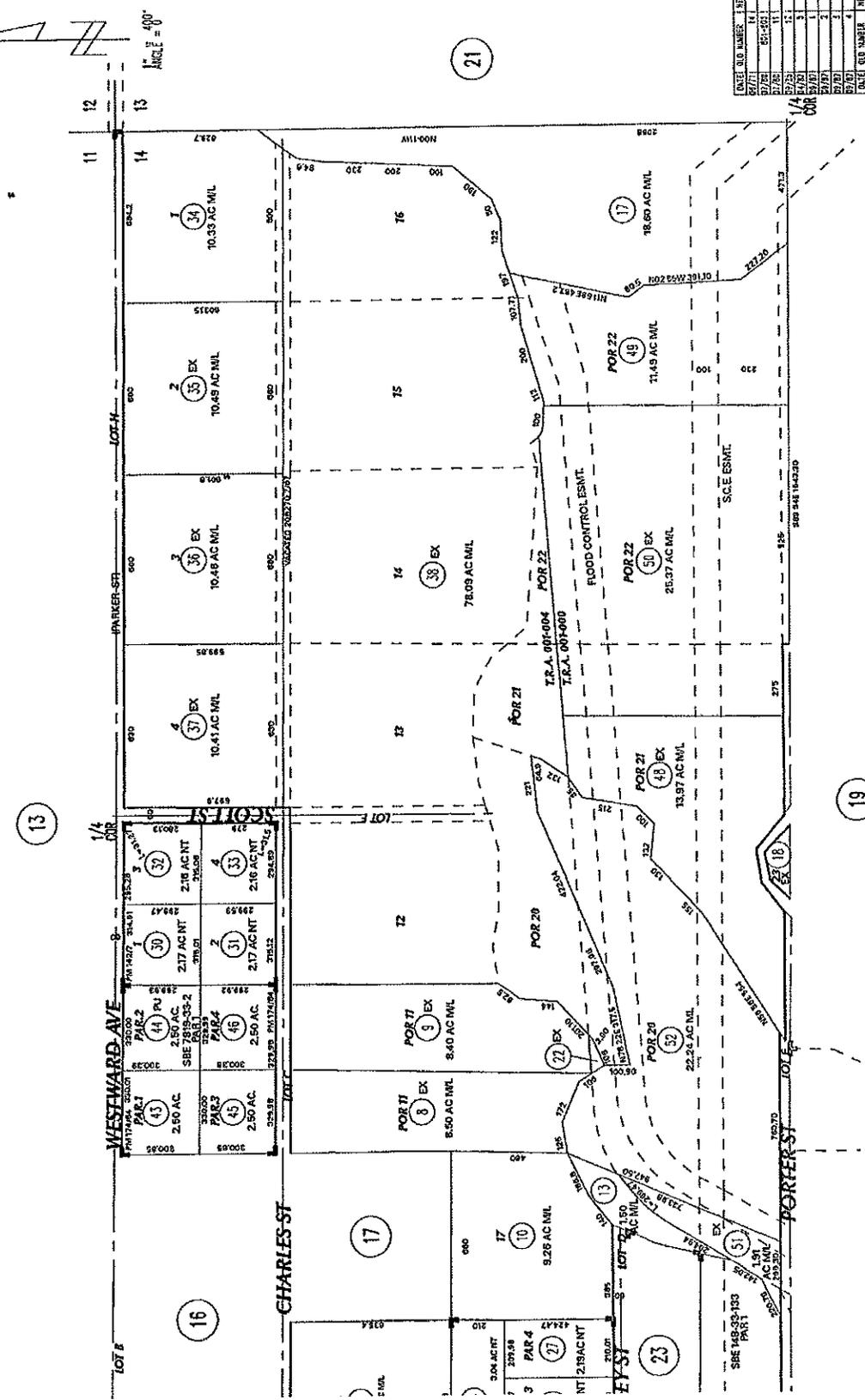
Drawn: G.L.O. 9-24-1918
M.B.T. 20
R/S 5/21
SEPT. 1969

532-18
24-21

T.R.A. 001-000
001-004

POR. N 14 T. 3S., R. 1E
CITY OF BANNING

IT PURPOSES ONLY. NO LIABILITY
DATA SHOWN. ASSESSOR'S PARCEL
OR BUILDING SITE GRADANCES.



DATE	OLD NUMBER	NEW NUMBER
8/7/71	14	20
8/7/71	21-23	27-29
8/7/71	11	17
8/7/71	12	18
8/7/71	13	19
8/7/71	14	20
8/7/71	15	21
8/7/71	16	22
8/7/71	17	23
8/7/71	18	24
8/7/71	19	25
8/7/71	20	26
8/7/71	21	27
8/7/71	22	28
8/7/71	23	29
8/7/71	24	30
8/7/71	25	31
8/7/71	26	32
8/7/71	27	33
8/7/71	28	34
8/7/71	29	35
8/7/71	30	36
8/7/71	31	37
8/7/71	32	38
8/7/71	33	39
8/7/71	34	40
8/7/71	35	41
8/7/71	36	42
8/7/71	37	43
8/7/71	38	44
8/7/71	39	45
8/7/71	40	46
8/7/71	41	47
8/7/71	42	48
8/7/71	43	49
8/7/71	44	50
8/7/71	45	51
8/7/71	46	52
8/7/71	47	53
8/7/71	48	54
8/7/71	49	55
8/7/71	50	56
8/7/71	51	57
8/7/71	52	58
8/7/71	53	59
8/7/71	54	60
8/7/71	55	61
8/7/71	56	62
8/7/71	57	63
8/7/71	58	64
8/7/71	59	65
8/7/71	60	66

NB 8/44 WAVERLY TRACT
PM 36/63-64 PARCEL MAP NO. 76-02
PM 142/7-8 PARCEL MAP NO. 20979
PM 174/64-65 PARCEL MAP NO. 24908

DATA: PM 172/16-17

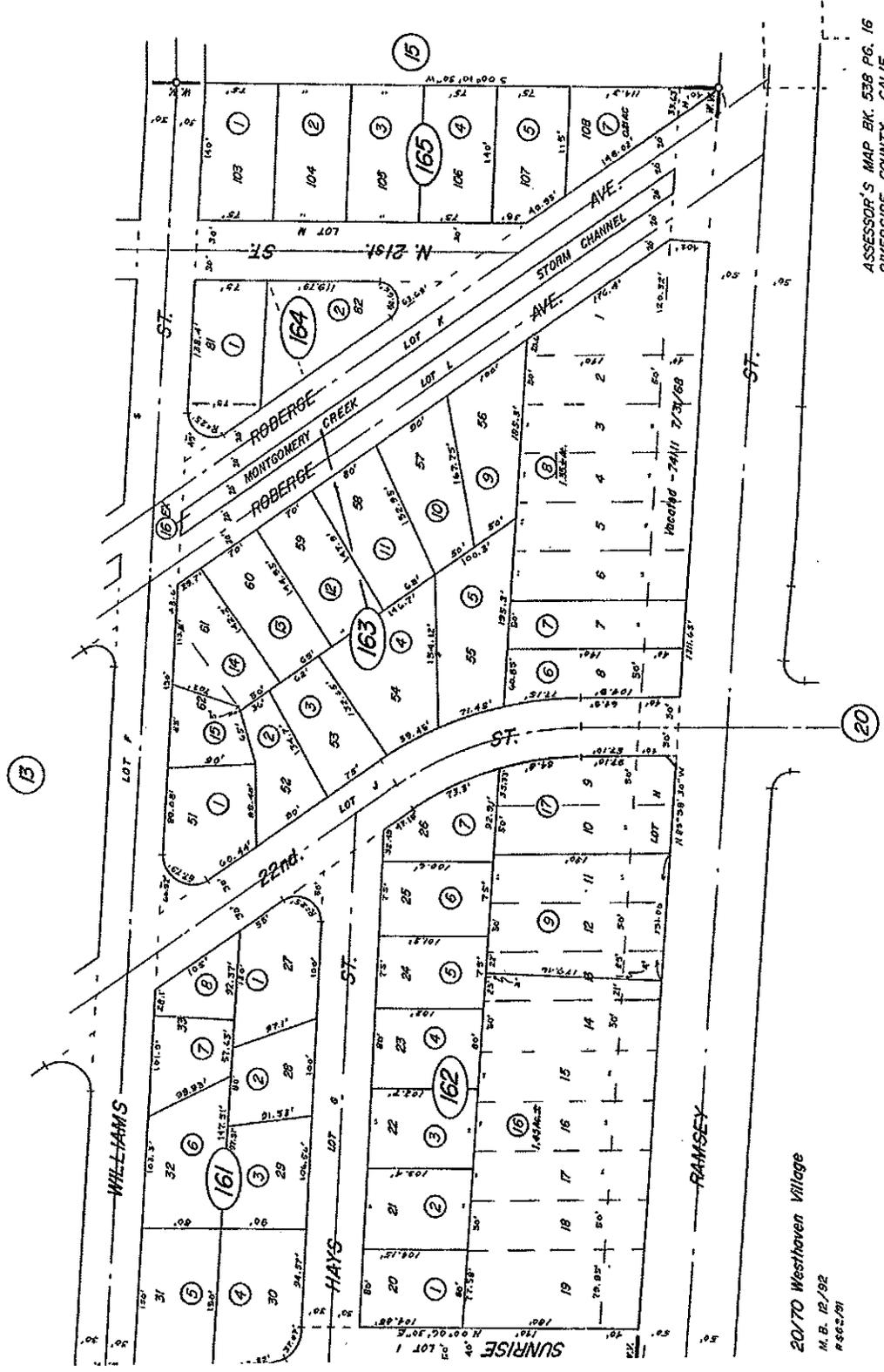
PG. 18
if. 158b

Jun 17 2005

9-2

T.C.A. 100

POR. E/1/2 SEC. 8, T.3S., R.1E.



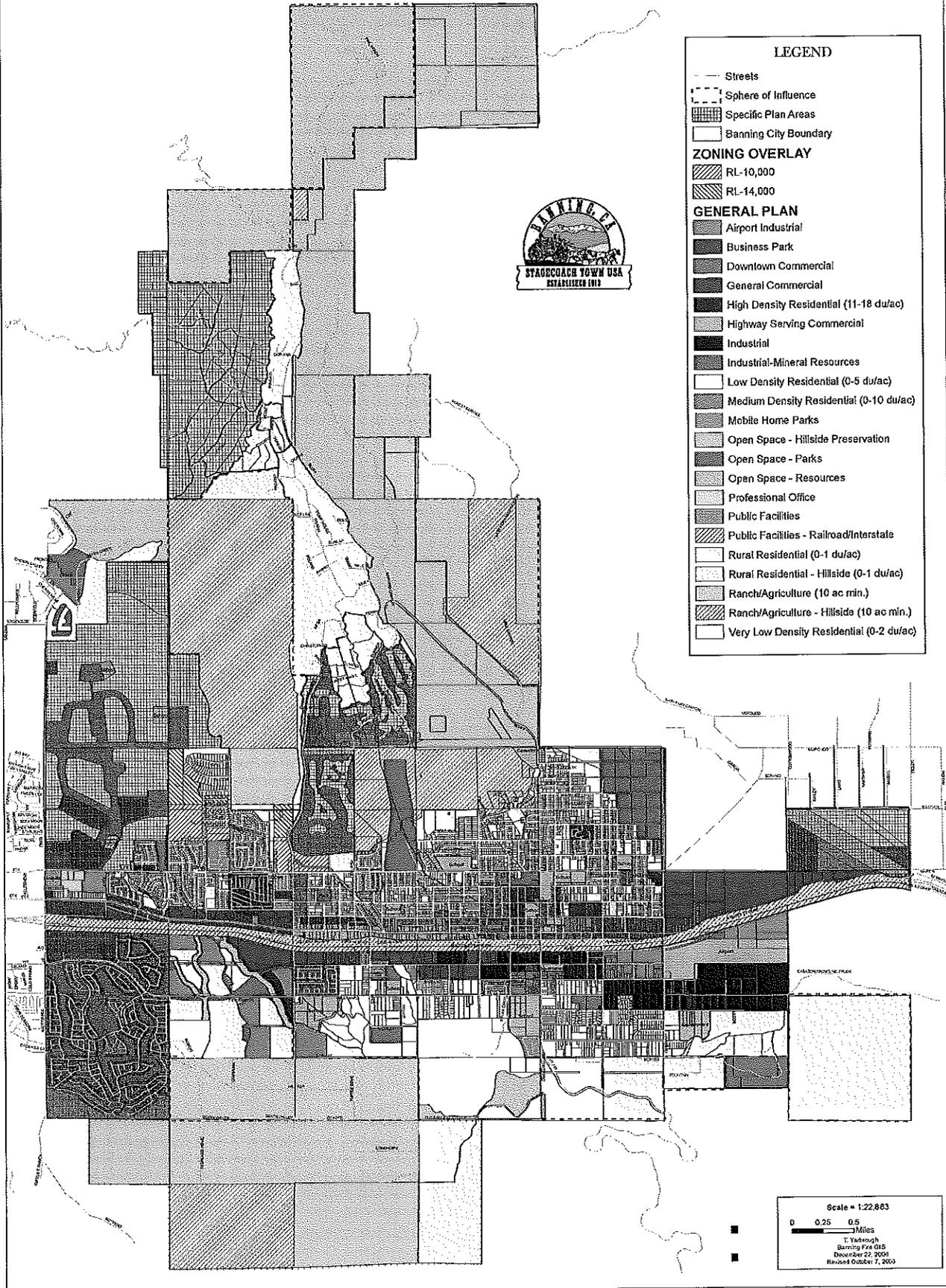
ASSESSOR'S MAP BK. 538 PG. 16
RIVERSIDE COUNTY, CALIF.

20/70 Westhaven Village
M.B. 12/92
P.562/91



Exhibit G – Zoning Information

CITY OF BANNING GENERAL PLAN WITH ZONING OVERLAY



CITY COUNCIL/BANNING UTILITY AUTHORITY

DATE: September 10, 2013

TO: Banning Utility Authority

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2013-15 UA "Awarding the Construction Contract for Project No. 2011-01W, 'Water Department Parking Lot and Perimeter Wall Improvements,' and Rejecting All Other Bids"

RECOMMENDATION: Adopt Utility Authority Resolution No. 2013-15 UA:

- I. Awarding the Construction Contract for Project No. 2011-01W, "Water Department Parking Lot and Perimeter Wall Improvements" to Cooley Construction, Inc., of Hesperia, California for an amount of \$530,086.70 and allowing a 10% contingency of \$53,008.67.
- II. Authorizing the Administrative Services Director to make the necessary budget adjustments, appropriations, and transfers to fund this project and to approve change orders within the 10% contingency of \$53,008.67.

JUSTIFICATION: Cooley Construction, Inc. is the lowest responsive and responsible bidder to construct Project No. 2011-01W, "Water Department Parking Lot and Perimeter Wall Improvements."

BACKGROUND: The Public Works staff advertised a "Notice Inviting to Bid", as shown attached as Exhibit "A", on July 19, 2013 and July 26, 2013 for Project No. 2011-01W, "Water Department Parking Lot and Perimeter Wall Improvements." The scope of work under this project includes the construction of an asphalt concrete/aggregate base parking lot; construction of curb and gutters driveways, handicap ramps, concrete walkways; construction of new fencing, gates, and pilasters all in accordance with the City of Banning Standard Specifications.

On August 22, 2013 the City Clerk received four (4) bids and publicly opened and read out loud the following results:

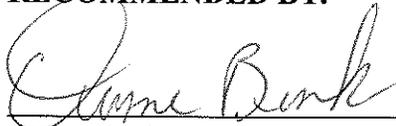
<u>Contractor</u>	<u>Total Bid</u>
1. Cooley Construction, Inc.	\$530,086.70
2. The Van Dyke Corporation	\$537,955.00
3. Tri-Star Contracting II, Inc.	\$659,545.80
4. Laird Construction Co., Inc.	\$674,364.00

If approved the project is anticipated to begin in October 2013. The project specifications have allowed for forty-five (45) working days to complete the project.

FISCAL DATA: The total project cost is equal to \$583,095.37 which includes a 10% construction contingency and professional services costs. An appropriation in the amount of

\$283,295.37 from the Water Capital Facility Fund is needed in Account No. 661-6300-471.90-07, which currently has a balance of \$299,800.00.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2013-15 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2011-01W, "WATER DEPARTMENT PARKING LOT AND PERIMETER WALL IMPROVEMENTS" AND REJECTING ALL OTHER BIDS

WHEREAS, a Notice Inviting Bids was advertised on July 19, 2013 and July 26, 2013, as shown attached as Exhibit "A", and four (4) bids were received and opened on August 22, 2013; and

WHEREAS, Cooley Construction, Inc. of Hesperia, California is the lowest responsible bidder to construct Project No. 2011-01W, "Water Department Parking Lot and Perimeter Wall Improvements"; and

WHEREAS, the scope of work under this project includes the construction of an asphalt concrete/aggregate base parking lot; construction of curb and gutters driveways, handicap ramps, concrete walkways; construction of new fencing, gates, and pilasters all in accordance with the City of Banning Standard Specifications.

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

SECTION 1. Banning Utility Authority adopts Resolution No. 2013-15 UA, awarding the Construction Contract for Project No. 2011-01W, "Water Department Parking Lot and Perimeter Wall Improvements" to Cooley Construction, Inc. of Hesperia, California for an amount equal to \$530,086.70 and allowing a 10% contingency of \$53,008.67 and rejecting all other bids.

SECTION 2. Banning Utility Authority authorizes the Administrative Services Director to make the necessary budget adjustments, appropriations, and transfers to fund this project and to approve change orders within the 10% contingency of \$53,008.67.

SECTION 3. The City Manager is authorized to execute the contract agreements for Project No. 2011-01W "Water Department Parking Lot and Perimeter Wall Improvements." This authorization will be rescinded if the contract agreements are not executed within sixty (60) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 10th day of September, 2013.

Deborah Franklin, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary
City of Banning

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

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

CERTIFICATION:

I, Marie A. Calderon, Secretary to the Banning Utility Authority of the City of Banning, do hereby certify that the foregoing Resolution No. 2013-15 UA was duly adopted by the Banning Utility Authority of the City of Banning at its joint meeting thereof held on the 10th day of September, 2013, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

EXHIBIT "A"
NOTICE INVITING TO BID

NOTICE INVITING TO BID
PROJECT NO. 2011-01W,
WATER DEPARTMENT
PARKING LOT AND PE-
RIMETER WALL IM-
PROVEMENTS OWNER:
City of Banning PROJECT
DESCRIPTION: The scope
of work under this project
includes the construction of
an asphalt concrete/aggre-
gate base parking lot; con-
struction of curb and gut-
ters, driveways, handicap
ramps, concrete walkways;
construction of new fencing,
gates and pilasters all in ac-
cordance with the City of
Banning Standard Specifi-
cations. The Contractor
must comply with all
NPDES requirements to re-
duce storm water run-off by
implementing applicable
BMPs, as required by the
Public Works Inspector.
PLANS & SPECS: Full-size
drawings and specifications
will be made available on
July 23, 2013, and may be
obtained at the Public
Works Department, Engi-
neering Division, City of
Banning, 99 E. Ramsey
Street, Banning, California
92220, by a non-refundable
deposit of Fifty Dollars
(\$50.00) per set. An addi-
tional non-refundable
charge of Fifteen Dollars
(\$15.00) to cover the cost
of wrapping, handling, and
postage will be made for
each set of Contract Docu-
ments mailed. MANDA-
TORY PRE-BID CONFER-
ENCE: August 5, 2013 at
10:00 a.m. at the City of
Banning, City Hall, 99 E.
Ramsey St., Banning. RE-
QUIREMENTS: Prevailing
Wage, Certified Payroll, Bid
Bond, Payment and Per-
formance Bond, Insurance,
etc., per the approved
specifications. Pursuant to
the provisions of Public
Contract Code Section
3300, the City has deter-
mined that the Contractor
shall possess a valid Class
'A' license at the time that
the Contract is awarded.
Failure to possess the
specified license shall ren-
der the bid as not responsi-
ble and/or non-responsive
and shall act as a bar to
award the Contract to any
bidder not possessing said
license at the time of
award. SEALED BIDS
DUE: August 22, 2013 and
Opened Publicly at 2:00
p.m. local time, at the
above City Hall address,
Attn: City Clerk.
CITY OF BANNING, CALI-
FORNIA
Dated: 7/16/2013
Publication Date: 7/19/2013
7/26/2013
Marie A. Calderon
City Clerk
Published In The Record
Gazette
No. 91676
3719, 26, 2013

205

CITY COUNCIL / BANNING UTILITY AUTHORITY

DATE: September 10, 2013

TO: Banning Utility Authority

FROM: Duane Burk, Director of Public Works

SUBJECT: Banning Utility Authority Resolution No. 2013-16 UA, "Approving the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc."

RECOMMENDATION: Adopt Banning Utility Authority Resolution 2013-16 UA:

- I. Approving the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc. to extend the scope of services for an additional five (5) years and thereby amending the termination date of the Original Agreement to September 30, 2018, attached hereto as Exhibit "A."
- II. Authorizing the City Manager to execute the first amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc.

JUSTIFICATION: Approval of the First Amendment is essential in order to continue the operation and maintenance of the City of Banning's Wastewater Treatment Plant.

BACKGROUND: On September 23, 2003, the City Council approved Resolution No. 2003-90 "Approving the Contract for Operation and Maintenance of City of Banning Wastewater Treatment Plant" in the amount of \$41,500.00 monthly for a total of \$498,000.00 annually.

United Water Environmental Services, Inc. will continue to operate and maintain the Wastewater Treatment Plant in a cost-effective and professional manner. The wastewater effluent discharged from the Wastewater Treatment Plant and other operational characteristics shall at all times meet the requirements of all governmental regulatory agencies in effect on date of execution of this amendment, and as may at any time be required by law, including those requirements as specified in California Regional Water Quality Control Board Orders within the limits of the operating capability of the Wastewater Treatment Plant. United Water Environmental Services, Inc. shall perform operating processes of preliminary treatment, influent pumping, trickling filtration, secondary clarifications, anaerobic digestion, solids thickening, drying beds, and disposal of all screening, grit and sludge. Additionally, maintenance including treatment plant equipment maintenance, building maintenance, and landscape maintenance shall continue.

The First Amendment will extend the termination date from September 30, 2013 until September 30, 2018. United Water Environmental Services, Inc., has provided and continues to provide quality services to the Wastewater Utility for the City of Banning.

FISCAL DATA: The compensation to United Water Environmental Services, Inc. under this proposed Amendment is \$52,930.00 per month, an annual Consumer Price Index (CPI) increase of 1.27% to the existing Agreement. This will result in an additional cost of \$7,968.00 annually to the Wastewater Utility. The funding for this contract is available in the Wastewater Division Operations account 680-8000-454.23-38.

RECOMMENDED BY:



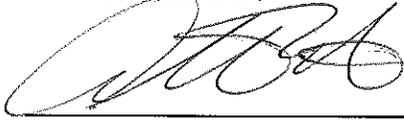
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2013-16 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE MAINTENANCE AND OPERATIONS AGREEMENT WITH UNITED WATER ENVIRONMENTAL SERVICES, INC.

WHEREAS, On September 23, 2003, the City Council approved Resolution No. 2003-90 “Approving the Contract for Operation and Maintenance of City of Banning Wastewater Treatment Plant”; and

WHEREAS, since 1993, United Water Environmental Services, Inc., has provided and continues to provide quality services to the Wastewater Utility for the City of Banning; and

WHEREAS, in order to continue to provide economical and reliable sewer services to the City of Banning’s customers, staff request the approval of the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc. to extend the termination date from September 30, 2013 to September 30, 2018.

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

SECTION 1. Banning Utility Authority adopts Resolution No. 2013-16 UA, “Approving the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc.” as attached hereto as Exhibit “A”.

SECTION 2. The City Manager is authorized to execute the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc. This authorization will be rescinded if the contract agreement is not executed by the parties within sixty (60) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 10th day September, 2013.

Deborah Franklin, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary
City of Banning

**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, do hereby certify that the foregoing Resolution No. 2013-16 UA was duly adopted by the Banning Utility Authority of the City of Banning at its joint meeting, thereof, held on the 10th day of September, 2013, by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

**1ST AMENDMENT TO THE
MAINTENANCE & OPERATIONS AGREEMENT
WITH
UNITED WATER ENVIRONMENTAL SERVICES, INC.**

AMENDMENT TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS FIRST AMENDMENT TO THE MAINTENANCE AND OPERATIONS AGREEMENT ("Amendment") by and between the **CITY OF BANNING** ("City") and **UNITED WATER ENVIRONMENTAL SERVICES, INC.**, a Delaware corporation ("Contractor") is effective as of the 1st day of October, 2013.

RECITALS

A. City and Contractor entered into that certain Agreement for Contractual Services dated October, 1, 2003 ("Agreement"), whereby Contractor agreed to provide professional services necessary for the operation and maintenance of the Wastewater Treatment Plant in the City of Banning.

B. City and Contractor now desire to amend the Agreement to extend the scope of services an additional five (5) years and thereby amending the termination date of the Agreement of the original Contract to September 30, 2018. The original Scope of Work and tasks shall remain in full force and effect in accordance with its terms.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein.

(a) **Termination Date Extension:** In the Original Agreement, Section III-A TERM is hereby amended by deleting the sentence in its entirety and replacing it with: "Except as otherwise provided herein, services under this Agreement shall commence on October 1, 2003, and terminate on September 30, 2018."

These exhibits do not amend the existing exhibits but pertain to the additional services performed hereunder.

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

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

Contractor represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that,

with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been not events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

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

5. **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

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 10th day of September, 2013.

CITY:

CITY OF BANNING, a municipal corporation

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

David Aleshire, City Attorney

CONTRACTOR:

UNITED WATER ENVIRONMENTAL SERVICES INC.

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 DEVELOPER'S BUSINESS ENTITY.

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**CITY COUNCIL
REPORT OF OFFICERS**

DATE: September 10, 2013

TO: City Council

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: Resolution No. 2013-85 - Typographical Correction and Clarification regarding the 26-acre Property that was rezoned to Very High Density Residential for the Housing Element

RECOMMENDATION:

That the City Council adopt Resolution No. 2013- 85 providing clarification regarding the 26-acre piece of property that was rezoned to Very High Density Residential for a property that is located at the westerly portion of Sunset Avenue and Bobcat Road and south of Pershing Creek.

BACKGROUND:

On July 23, 2013, the City Council adopted Resolution No. 2013-75 and Ordinance No. 1466 approving the 2008-2013 Housing Element and re-zoning of properties, including a 26-acre *portion* of APN 537-190-018. The re-zoned 26-acre portion is located at the westerly portion of Sunset Avenue and Bobcat Road and south of Pershing Creek to provide adequate sites as required by the State Housing and Community Development. On August 13, 2013, the City Council adopted the second reading of Ordinance No. 1466.

Subsequent to the adoption of Ordinance No. 1466, there arose public confusion regarding whether the entirety of APN 537-190-018 or only a 26-acre portion of the parcel was re-zoned to Very High Density Residential. Maps, charts, staff report statements and Council discussion of the re-zoning designation clearly demonstrated that the intent and Council actions taken were limited to re-zoning only a 26-acre portion of APN 537-190-018. However, through clerical error, both Resolution No. 2013-85 and Ordinance No. 1466 purport to “change the designations for the following parcels to VHDR: 537-190-018. . .” This language was incorrectly construed by the public as meaning that all of APN 537-190-018 was re-zoned to VHDR.

As a purely clerical, technical correction to Resolution No. 2013-75 and Ordinance No. 1466, the words “westerly 26 acres of” should be added to the description of the re-zoned area of APN 537-190-018. Government Code 36934 provides that typographical or clerical errors can be corrected after the ordinance was introduced. The purpose of this staff report and Resolution No. 2013-85 is to publicly effect such a technical, clerical correction in the description of the re-zoned area of APN 537-190-018.

FISCAL DATA:

The adoption of this resolution does not impact the City’s General Fund.

PREPARED BY:



Zai Abu Bakar
Community Development Director

REVIEWED BY:



June Overholt
Deputy City Manager/
Administrative Services Director

APPROVED BY:



Andrew J. Takata
City Manager

Attachments:

1. Resolution No. 2013-85
2. Map showing the 26-acre portion of Assessor's Parcel No. 537-190-018
3. Ordinance No. 1466
4. Resolution No. 2013-75

ATTACHMENT 1
CITY COUNCIL RESOLUTION NO. 2013-85

RESOLUTION NO. 2013-85

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, PROVIDING CLARIFICATION REGARDING THE 26-ACRE PROPERTY THAT WAS REZONED FROM MEDIUM DENSITY RESIDENTIAL TO VERY HIGH DENSITY RESIDENTIAL FOR CONFORMANCE WITH THE HOUSING ELEMENT

WHEREAS, on July 23, 2013, the City Council adopted Resolution No. 2013-75 and Ordinance No. 1466 approving the 2008-2013 Housing Element and re-zoning of properties, including a 26-acre portion of APN 537-190-018; the re-zoned 26-acre portion is located at the westerly portion of Sunset Avenue and Bobcat Road and south of Pershing Creek to provide adequate sites as required by the State Housing and Community Development; and

WHEREAS, on August 13, 2013, the City Council adopted the second reading of Ordinance No. 1466; and

WHEREAS, after adoption of Ordinance No. 1466, there arose public confusion regarding whether the entirety of APN 537-190-018 or only a 26-acre portion of the parcel was re-zoned to Very High Density Residential. Maps, charts, staff report statements and Council discussion of the re-zoning designation clearly demonstrated that the intent and Council actions taken were limited to re-zoning only a 26-acre portion of APN 537-190-018. However, through clerical error, both Resolution No. 2013-85 and Ordinance No. 1466 purport to “change the designations for the following parcels to VHDR: 537-190-018. . .” This language was incorrectly construed by the public as meaning that all of APN 537-190-018 was re-zoned to VHDR; and

WHEREAS, Government Code 36934 provides that typographical or clerical errors can be corrected after the ordinance was introduced. As a purely clerical, technical correction to Resolution No. 2013-75 and Ordinance No. 1466, the words “westerly 26 acres of” should be added to the description of the re-zoned area of APN 537-190-018.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1. CITY COUNCIL ACTIONS.

a. The City Council hereby authorizes the following typographical corrections to Item 8, of Section 3 of Ordinance No. 1466 to read as follows:

“The Zoning Map is hereby amended to change the designations for the following parcels to VHDR:

The westerly 26-acre portion of 537-190-018”

b. The City Council hereby makes the following typographical corrections to Item c., of Section 3 of Resolution No. 2013-75 to read as follows:

“Amend General Plan Land Use Element Exhibit III-2 to change the designations for the following parcels to VHDR:

The westerly 26-acre portion of 537-190-018”

SECTION 2. INCORPORATION BY REFERENCE.

“The above recitals are hereby incorporated into this resolution by this reference, and based on the facts stated therein the Council finds and determines that the technical corrections effected by this resolution reflect the correction of a mere clerical error by which certain language in the site description was inadvertently omitted from the re-zone area description.”

PASSED, APPROVED AND ADOPTED this 10th day of September, 2013.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie Calderon, City Clerk
City of Banning, California

APPROVED AS TO FORM:

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

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-85 was duly adopted at a regular meeting of the City Council of the City of Banning, held on the 10th day of September, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning, California

ATTACHMENT 2
MAP SHOWING THE 26-ACRE PORTION OF
ASSESSOR'S PARCEL NO. 537-190-018

EXHIBIT FOR ORDINANCE NO. 1466 AND RESOLUTION NO. 2013-75
SHOWING THE WESTERLY 26-ACRE PORTION OF ASESOR'S PARCEL NO. 537-190-018



ATTACHMENT 3
ORDINANCE NO. 1466

ORDINANCE NO. 1466

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA ADOPTING ZONE CHANGE NO. 13-3502 TO THE ZONING ORDINANCE AND ZONING MAP IN CONFORMANCE WITH THE GENERAL PLAN HOUSING ELEMENT

WHEREAS, California Government Code Section 65302(c) mandates that each city shall include a Housing Element in its General Plan. The Housing Element is required to identify and analyze existing and projected housing needs and include statements of the City's goals, policies, quantified objectives, and scheduled programs for the preservation, improvement, and development of housing. The City in adopting its Housing Element, must consider economic, environmental, and fiscal factors, as well as community goals as set forth in the General Plan.

WHEREAS, many of the policies and programs contained in the Housing Element are intended to facilitate the preservation, maintenance and improvement of the City's existing housing stock. These programs would not change development patterns or result in any physical environmental impacts. However, under state law each jurisdiction is also required to demonstrate that local land use plans and zoning regulations provide development opportunities to accommodate the jurisdiction's assigned fair share of the region's new housing needs. The process by which fair share housing needs are determined is called the "Regional Housing Needs Assessment" (RHNA). The RHNA is prepared by the Southern California Association of Governments (SCAG). Once the RHNA allocations are adopted by SCAG and accepted by HCD, they become final and no changes or judicial review are permitted under state law; and

WHEREAS, the RHNA identifies Banning's share of the regional housing need for the January 2006 through June 2014 projection period as 3,841 units. This total includes 873 very-low-income units, 618 low-income units, 705 moderate-income units, and 1,645 above-moderate-income units. In addition, the City must accommodate a RHNA carryover from the previous planning cycle of 598 lower-income units. State law requires the City to demonstrate the availability of adequate sites with appropriate zoning to accommodate the need for various types of housing units commensurate with the RHNA; and

WHEREAS, under state law, a density of at least 20 housing units per acre is considered necessary to facilitate the production of housing affordable to lower-income households in Banning. The Banning General Plan and Zoning Ordinance currently allow a maximum residential density of 18 units/acre in the High Density Residential (HDR) district. As a result, the City's current land use regulations and inventory of developable land do not provide sufficient capacity to accommodate the state-mandated lower-income portion of the RHNA. Therefore, in order to provide adequate sites to accommodate the City's fair share need for lower-income housing in compliance with state law and the General Plan Housing Element, amendments to the City's zoning regulations are required; and

WHEREAS, in accordance with Government Code §65854, on the 7th day of June 2013, the City gave public notice as required under Chapter 17.68 of the Zoning Ordinance by advertising in the Record Gazette newspaper of a public hearing to be held by the Planning Commission regarding Zone Change No. 13-3502; and

WHEREAS, on the 3rd day of July 2013, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the proposed amendment, and at which time the Planning Commission considered Zone Change No. 13-3502; and

WHEREAS, at this public hearing, the Planning Commission analyzed this proposed project together with the Initial Study/Mitigated Negative Declaration in compliance with California Environmental Quality Act Section 15162 and recommended its adoption by the City Council; and

WHEREAS, On July 12, 2013 notice of the City Council public hearing regarding Zone Change No. 13-3502 was published in the Record Gazette newspaper; and

WHEREAS, on July 23, 2013 the City Council conducted a duly noticed public hearing to consider Zone Change No. 13-3502, at which time all interested persons were invited to provide comments in opposition to or support for the proposed amendment.

NOW THEREFORE, the City Council of the City of Banning does make the following findings and based thereon and the administrative record does ordain as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

An Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program were prepared in accordance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines Sections 15000 through 15387, and the City of Banning Environmental Review Guidelines. City Council Resolution No. 2013-75 as referenced herein provides environmental findings for the Project. The City Council finds that the IS/MND reflects its independent judgment and further finds that the IS/MND satisfies the requirements of CEQA for the proposed project

SECTION 2 REQUIRED FINDINGS FOR ZONE CHANGE NO. 13-3502:

Finding No. 1: The proposed Zone Change is consistent with the General Plan.

Facts in Support of Finding: The proposed amendments to the Housing and Land Use Elements would demonstrate the availability of adequate sites for residential development commensurate with the Regional Housing Needs Assessment (RHNA) for the 2008-2013 planning period. The proposed amendments to the Zoning Ordinance and Map are not only consistent with the General Plan, they are required to ensure consistency with the Housing and Land Use Elements of the General Plan and the RHNA by

establishing zoning regulations on sufficient sites to accommodate housing development at densities necessary to meet the projected needs of lower-income households in Banning.

Finding No. 2: The proposed Zone Change would not be detrimental to the environment, or to the public interest, health, safety, convenience, or welfare of the City.

Facts in Support of Finding: Pursuant to CEQA, an Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for the proposed zoning amendments. The IS/MND concluded that with the mitigation measures identified in the General Plan EIR and the IS/MND, development of the sites proposed for redesignation to higher densities would not result in new significant environmental effects that were not previously analyzed and disclosed in the General Plan EIR. Further, any future development on rezoned sites must comply with applicable development standards and environmental requirements designed to protect the health, safety and welfare of the community and its residents. Further facts and evidence in support of this finding are contained in the IS/MND and the accompanying staff report, all of which are incorporated herein by this reference.

Finding No. 3: The subject property is physically suitable for the requested land use designation(s) and the anticipated development(s).

Facts in Support of Finding: Pursuant to CEQA, an Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for the proposed zoning amendments. The IS/MND concluded that with the mitigation measures identified in the General Plan EIR and the IS/MND, development of the sites proposed for rezoning to higher densities would not result in new significant impacts regarding access, utilities, land use compatibility or other potential environmental effects that were not previously analyzed and disclosed in the General Plan EIR. Further facts and evidence in support of this finding are contained in the IS/MND and the accompanying staff report, all of which are incorporated herein by this reference.

Finding No. 4: The proposed Zone Change shall ensure development of desirable character which will be compatible with existing and proposed development in the surrounding neighborhood.

Facts in Support of Finding: Pursuant to CEQA, an Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for the proposed zoning amendments. The IS/MND concluded that with the mitigation measures identified in the General Plan EIR and the IS/MND, development of the sites proposed for rezoning to higher densities would not result in new significant impacts to the surrounding properties or the community in general that were not previously analyzed and disclosed in the General Plan EIR. Further facts and evidence in support of this finding are contained in the IS/MND and the

accompanying staff report, all of which are incorporated herein by this reference. Moreover, zoning amendments to allow higher densities are required by state law to ensure consistency with the Regional Housing Needs Assessment.

SECTION 3. CITY COUNCIL ACTIONS.

The City Council hereby takes the following actions:

1. Zoning Code Section 17.08 140 is amended to read as follows:

“17.08.140 - Multi-family housing standards.

Multi-family housing is permitted in the LDR, MDR, and HDR and VHDR zones, and is subject to design review. Multi-family housing shall be constructed in the following manner:

A. All multi-family developments with more than ten units shall provide 30% useable open space for active and passive recreational uses. Useable open space areas may not include: rights of way; vehicle parking areas; areas adjacent to or between any structures less than 15 feet apart; setbacks; detention basins or any use whose primary purpose is not intended for recreation; patio or private yards; or areas with a slope greater than eight percent.

B. Every dwelling unit shall have a patio or balcony not less than 300 square feet in area or 25% of the dwelling unit size, whichever is less

C. All multi-family developments shall provide recreational amenities within the site such as a: swimming pool; spa; clubhouse; tot lot with play equipment; court game facilities for tennis, basketball or racquetball; improved softball or baseball fields; or day care facilities. The type of amenities shall be approved by the Community Development Director and provided according to the following schedule:

0 to 10 units	1 amenity
11-50 units	2 amenities
51 to 100 units	3 amenities
101 to 200 units	4 amenities
201 to 300 units	5 amenities
Above 300 units	one amenity should be added for each 100 additional units or fraction thereof.

D. Off street parking spaces for multi-family residential developments shall be located within 150 feet from the front or rear door of the dwelling for which is parking space is designated.

E. Each dwelling unit shall be provided at least 150 cubic feet of private enclosed storage space within the garage, carport, or immediately adjacent to the dwelling unit.

F. Driveway approaches within multi-family developments of more than ten units shall be delineated with interlocking pavers, rough textured concrete, or stamped concrete and landscaped medians.

G. Common laundry facilities of sufficient number and accessibility consistent with the number of living units and the Uniform Building code shall be provided.

H. Every dwelling unit shall be plumbed and wired for a washing machine and a dryer.

I. For multi-family developments of over ten units, security and management plans shall be submitted for review and approval."

2. Zoning Code Section 17.12.050 H.2 is amended to read as follows:

"2. Multi-family residential uses shall be permitted at a density of up to 18 dwelling units per acre. Multi-family or mixed-use developments with a minimum of 16 units and that reserve at least 50% of the units for lower-income households shall be permitted at a density of up to 20 dwelling units per acre. Multi-family residential uses are prohibited on the ground floor on Ramsey Street and San Gorgonio within the Downtown Commercial district Multi-family uses on Ramsey Street and San Gorgonio must occur above commercial uses. In the balance of the district, multi-family uses may occur on any level."

3. Zoning Code Section 17.08.010.B is hereby amended to add a new High Density Residential-20 ("HDR-20") zoning district and to renumber the remaining section as follows:

"9. High Density Residential-20 (HDR-20) (20 du/acre). Allows condominiums and townhomes, as well as apartments with the provision of common area amenities and open space by-right at a minimum density of 20 dwelling units per acre when at least 50% of the units are reserved for lower-income households. The clustering of condominiums and townhomes is appropriate with the provision of common area amenities and open space. Home Occupations may be appropriate with approval of a Home Occupation permit."

4. Zoning Code Table 17.08.020 is amended to add the following footnote to the HDR section:

“*Housing developments in the HDR-20 district are permitted at a density of 20 dwelling units per acre when at least 50% of the units are reserved for lower-income households. Development standards for qualifying developments shall be as provided for the HDR district in Chapter 17.24.”

5. A new *Very High Density Residential* (“VHDR”) zoning district is hereby added to Zoning Code Section 17.08.010.B as follows:

“10. Very High Density Residential (VHDR) (19-24 du/acre). Allows condominiums and townhomes, as well as apartments with the provision of common area amenities and open space. The clustering of condominiums and townhomes is appropriate with the provision of common area amenities and open space. Home Occupations may be appropriate with approval of a Home Occupation permit.”

6. Zoning Code Table 17.08.020 is amended to add the following footnote to the new VHDR section:

“**Housing developments in the VHDR district are permitted at a minimum density of 20 dwelling units per acre by-right when at least 50% of the units are reserved for lower-income households.”

7. The Zoning Map is hereby amended to change the designations for the following parcels to HDR-20 (Exhibit 5):

“537-120-034	419-140-059
540-083-002	534-161-010
541-110-013	537-110-008
532-080-004	541-110-009”

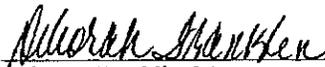
- 8 The Zoning Map is hereby amended to change the designations for the following parcels to VHDR:

“537-190-018”

SECTION 4. PUBLICATION

The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the City. Thereupon, this Ordinance shall take effect thirty (30) days after the adoption and be in effect according to the law.

PASSED, APPROVED AND ADOPTED this 13th day of August, 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:

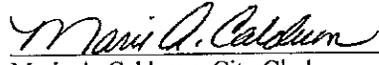
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1466 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 23rd day of July, 2013 and was duly adopted at a regular meeting of said City Council held on the 13th day of August, 2013, by the following vote, to wit:

AYES Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin

NOES None

ABSENT: None

ABSTAIN: None



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

ATTACHMENT 4
CITY COUNCIL RESOLUTION NO. 2013-75

RESOLUTION NO. 2013-75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING GENERAL PLAN AMENDMENT NO. 13-2504 WITH DELETION OF PARCELS 537-190-020 AND 537-190-021

WHEREAS, California Government Code Section 65302(c) mandates that each city shall include a Housing Element in its General Plan. The Housing Element is required to identify and analyze existing and projected housing needs and include statements of the City's goals, policies, quantified objectives, and scheduled programs for the preservation, improvement, and development of housing. The City in adopting its Housing Element, must consider economic, environmental, and fiscal factors, as well as community goals as set forth in the General Plan.

WHEREAS, many of the policies and programs contained in the Housing Element are intended to facilitate the preservation, maintenance and improvement of the City's existing housing stock. These programs would not change development patterns or result in any physical environmental impacts. However, under state law each jurisdiction is also required to demonstrate that local land use plans and zoning regulations provide development opportunities to accommodate the jurisdiction's assigned fair share of the region's new housing needs. The process by which fair share housing needs are determined is called the "Regional Housing Needs Assessment" (RHNA). The RHNA is prepared by the Southern California Association of Governments (SCAG). Once the RHNA allocations are adopted by SCAG and accepted by HCD, they become final and no changes or judicial review are permitted under state law; and

WHEREAS, the RHNA identifies Banning's share of the regional housing need for the January 2006 through June 2014 projection period as 3,841 units. This total includes 873 very-low-income units, 618 low-income units, 705 moderate-income units, and 1,645 above-moderate-income units. In addition, the City must identify adequate sites to accommodate a RHNA carryover from the previous planning cycle of 598 lower-income units. State law requires the City to demonstrate the availability of adequate sites with appropriate zoning to accommodate the need for various types of housing units commensurate with the RHNA; and

WHEREAS, under state law, a density of at least 20 housing units per acre is considered necessary to facilitate the production of housing affordable to lower-income households in Banning. The Banning General Plan and Zoning Ordinance currently allow a maximum residential density of 18 units/acre in the High Density Residential (HDR) district. As a result, the City's current land use regulations and inventory of developable land do not provide sufficient capacity to accommodate the state-mandated lower-income portion of the RHNA. General Plan Amendment No. 13-2504 and Zone Change No. 13-3502 would provide sufficient additional capacity for lower-income housing in compliance with the City's RHNA allocation for the 2008-2013 planning period; and

WHEREAS, in accordance with Government Code §65854, on the 7th day of June 2013, the City gave public notice as required under Chapter 17.68 of the Zoning Ordinance by advertising in the Record Gazette newspaper of the holding of a public hearing by the Planning Commission regarding General Plan Amendment No. 13-2504; and

WHEREAS, on the 3rd day of July 2013, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the proposed amendment, and at which time the Planning Commission considered General Plan Amendment No. 13-2504; and

WHEREAS, at this public hearing the Planning Commission analyzed the proposed project together with the Initial Study/Mitigated Negative Declaration in compliance with California Environmental Quality Act (CEQA) Section 15162 and recommended its adoption by the City Council; and

WHEREAS, On July 12, 2013 notice of the City Council public hearing regarding GPA No. 13-2504 was published in the Record Gazette newspaper.

WHEREAS, on July 23, 2013 the City Council conducted a duly noticed public hearing to consider General Plan Amendment No. 13-2504, at which time all interested persons were invited to provide comments in opposition to or support for the proposed amendment.

NOW THEREFORE, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

An Initial Study/Mitigated Negative Declaration was prepared in accordance with the California Environmental Quality Act and City of Banning Environmental Review Guidelines.

Based on the Environmental Checklist prepared for the project, the accompanying staff report, the supporting environmental analysis and pursuant to Section 15162 of the CEQA Guidelines, the City Council has determined, on the basis of substantial evidence in the light of the whole record, that:

(a) The proposed General Plan and Zoning Code amendments do not propose substantial changes to the project which would require major revisions to the General Plan Final EIR due to new or substantially more severe significant environmental effects than previously analyzed in the FEIR;

(b) There have been no substantial changes in circumstances under which the project will be undertaken that will require major revisions to the General Plan Final EIR due to new or substantially more severe significant environmental effects than previously analyzed in the FEIR; and

(c) No new information of substantial importance as described in subsection (a)(3) of Section 15162 has been revealed that would require major revisions to the General Plan Final EIR or its conclusions.

Potential environmental impacts resulting from the adoption of the proposed General Plan amendment have been evaluated and, except for those previously determined to be significant and unavoidable in the FEIR, the impacts would be less than significant or reduced to a level considered less than significant with mitigation. Additionally, all appropriate project design features and mitigation measures will be incorporated in future development projects, as required by applicable development regulations and mitigation measures, and as described in the Mitigation Monitoring and Reporting Program attached hereto as "Exhibit A". Further facts and evidence in support of this finding are contained in the Initial Study/Mitigated Negative Declaration and the accompanying staff report, all of which are incorporated herein by this reference.

On the basis of all of the evidence in the record, the City Council finds that the Initial Study/Mitigated Negative Declaration reflects its independent judgment and satisfies the requirements of CEQA for General Plan Amendment No. 13-2504.

SECTION 2. REQUIRED FINDINGS FOR GENERAL PLAN AMENDMENT NO. 13-2504.

Finding No. 1: That the proposed amendment is internally consistent with the General Plan.

Facts in Support of Finding: The Housing Element is required to demonstrate the availability of adequate sites for residential development commensurate with the Regional Housing Needs Assessment (RHNA) for the 2008-2013 planning period. The proposed amendment to the General Plan Land Use Element would ensure consistency with the proposed Housing Element and the RHNA by designating sufficient sites for housing development at appropriate densities to accommodate the projected needs of lower-income households in Banning. The proposed amendment creates no internal inconsistencies with the General Plan; rather it harmonizes the General Plan with state law and RHNA requirements.

Finding No. 2: That the proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

Facts in Support of Finding: The proposed amendments to the Housing and Land Use Elements of the General Plan would encourage and facilitate the maintenance, improvement and development of housing needed to serve the City's current and projected population during the 2008-2013 planning period, as required by state law. Further, the Initial Study/Mitigated Negative Declaration prepared for the proposed amendments concluded that the proposed amendments would not result in any new significant environmental impacts. Further facts and evidence in support of this finding are contained in the accompanying Initial Study/Mitigated Negative Declaration and the

accompanying staff report, all of which are incorporated herein by this reference.

Finding No. 3: That the proposed amendment would maintain the appropriate balance of land uses within the City

Facts in Support of Finding State law requires each city to identify adequate sites for housing development commensurate with the Regional Housing Needs Assessment (RHNA). The proposed amendments to the Housing and Land Use Elements would ensure an appropriate balance of land uses by designating sufficient sites for housing consistent with the RHNA for the 2008-2013 planning period. The balance of land uses proposed by the amendment are the balance being required of the City by HCD and thus are, by definition of law, appropriate.

Finding No. 4: That the proposed parcels that are subject to the amendment are physically suitable, including but not limited to access, provisions of utilities, compatibility with adjoining land uses, and absence of physical constraints for the requested land use designations and the anticipated land use development.

Facts in Support of Finding: Pursuant to CEQA, an Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for the proposed Housing and Land Use Element amendments. The IS/MND concluded that with the mitigation measures identified in the General Plan EIR and the IS/MND, development of the sites proposed for redesignation to higher densities would not result in new significant impacts regarding access, utilities, land use compatibility or other potential environmental effects. Further facts and evidence in support of this finding are contained in the accompanying IS/MND and the accompanying staff report, all of which are incorporated herein by this reference.

SECTION 3. CITY COUNCIL ACTIONS.

The City Council takes the following actions:

1. The Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for General Plan Amendment No. 13-2504 are hereby approved.
2. General Plan Amendment No. 13-2504 is hereby approved, which includes the adoption of the 2008-2013 Housing Element and the following changes to the Land Use Element of the General Plan:
 - a. Amend the High Density Residential land use category on p. III-7 as follows:

“High Density Residential (HDR) (11-18 du/acre)

Allows condominiums and townhomes, as well as apartments with the provision of common area amenities and open space. Duplex and multi-plex development is the most prevalent type of development in this designation. The clustering of condominiums and townhomes may be appropriate with the provision of common area amenities and open space. Allowable base density may be increased to 20 du/acre for developments that reserve at least 50% of units for lower-income households. Mobile home parks and subdivisions may also be appropriate, with the approval of a conditional use permit. Home occupations are permitted.”

- b. Establish a new *Very High Density Residential* (“VHDR”) General Plan land use category, allowing residential development at densities of 19-24 units/acre, as follows:

“Very High Density Residential (HDR) (19-24 du/acre)

Allows condominiums and townhomes, as well as apartments with the provision of common area amenities and open space. Duplex and multi-plex development is the most prevalent type of development in this designation. The clustering of condominiums and townhomes may be appropriate with the provision of common area amenities and open space. Allowable base density may be increased to 20 du/acre for developments that reserve at least 50% of units for lower-income households. Home occupations are permitted.”

- c. Amend General Plan Land Use Element Exhibit III-2 to change the land use designation for the following parcels to VHDR:

537-190-018

PASSED, APPROVED AND ADOPTED this 23rd day of July, 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:

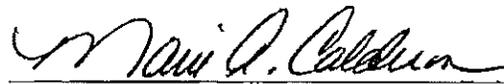
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-75, was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 23rd day of July, 2013, by the following vote, to wit:

AYES: Councilmembers Miller, Welch, Mayor Franklin

NOES: Councilmember Peterson

ABSENT: Councilmember Botts

ABSTAIN: None



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

**CITY COUNCIL AGENDA
REPORT OF OFFICERS**

DATE: September 10, 2013

TO: Honorable Mayor and City Council

FROM: Andy Takata, City Manager

SUBJECT: Resolution No. 2013-62, Authorizing the City Manager to Execute and Send Letters of Support or Opposition Consistent with Goals Adopted by the City Council

RECOMMENDATION: It is recommended that the City Council adopt Resolution No. 2013-62, Authorizing the City Manager to Execute and Send Letters of Support or Opposition Consistent with Goals Adopted by the City Council.

JUSTIFICATION: To aid and assist the City Manager in implementing the goals and objectives outlined in the City's Strategic Plan and to act upon items in the best interest of the City in a timely manner, it is recommended that the City Council authorize the City Manager to execute and send letters of support or opposition received from other agencies/organizations in addition to the League of California Cities. The authorization would address items the City Manager deems non-controversial. Any item the City Manager deems controversial would be brought forward to the City Council for action.

BACKGROUND: At its regular meeting held on November 9, 2010, the City Council adopted Resolution No. 2010-82, "Authorizing the City Manager to Direct the Preparation of and Send Letters of Support or Opposition Consistent with League Positions Adopted by the League of California Cities" (Attachment "A"). Resolution No. 2010-82 authorized the City Manager to sign and send letters without a vote of the City Council.

Due to the positive or negative impacts and timing of certain requests, it is in the best interest of the City to take a position on requests made by certain agencies/organizations. They turn to cities to request letters of support or opposition on the procurement and/or protection of funding for certain projects, vital community services, programs and grant applications, etc.

The following represents examples of ongoing requests for the City's support or opposition:

- To protect existing water supply, support initiatives and incentives for water reclamation and facilitate development of future water sources in Southern California;
- To seek reimbursement to cities for all State and Federal mandates;
- To oppose State budget cuts targeting critical local programs and services;
- To protect local control for land-use decision making and oppose legislation that would hinder or threaten local control;
- To expand infrastructure investment;
- To support and protect public safety;

- To support state/federal facilitation of timely construction of local transportation projects;
- To support projects approved by City Council;
- To support positions previously approved by the City Council;
- To oppose the use of gasoline sales tax revenue for other than state and local transportation purposes;
- To respond to requests related to items routine in nature, experienced in the normal course of conducting business in the City;
- To express to legislators the positive or negative impacts on the City of proposed legislation.

For requests not made within sufficient time for review and approval by the City Council, every effort will be made to seek review and approval by the Intergovernmental Communications and Advocacy Committee, established by the City Council at its regular meeting held November 13, 2012, per Resolution No. 2012-89 (Attachment "B").

The City Manager receives and monitors all requests from agencies/organizations and shall update the City Council on matters the City has taken a position on, including any substantive amendments or issues that would impact the spirit of the City's adopted policies to include the goals and objectives outlined in the City's Strategic Plan.

FISCAL DATA: There are no fiscal impacts associated with approving such authorization. Such letters are often intended to protect City revenues, resources and access to funding.

RECOMMENDED BY:



Andy Takata
City Manager

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

Attachments:

Attachment "A" – Staff Report and Resolution No. 2010-82, approved November 9, 2010

Attachment "B" – Staff Report and Resolution No. 2012-89, approved November 13, 2012

RESOLUTION NO. 2013-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE AND SEND LETTERS OF SUPPORT OR OPPOSITION CONSISTENT WITH GOALS ADOPTED BY THE CITY COUNCIL

WHEREAS, certain agencies/organizations turn to cities for letters of support or opposition; and

WHEREAS, due to the timing of matters which may present negative or positive impacts to the City; often requests are not made within sufficient time for review and approval by the City Council; and

WHEREAS, on November 13, 2012, the City Council adopted Resolution No. 2012-89 establishing the Intergovernmental Communications and Advocacy Committee; and

WHEREAS, the City Manager is responsible for updating the City Council on legislation or items the City has taken a position on, including any substantive amendments or issues that would impact the spirit of the City's adopted policies to include the goals and objectives outlined in the City's Strategic Plan; and

WHEREAS, the City Manager is committed to monitoring, responding to and informing the City Council of any items which may impact the City and its residents; and

WHEREAS, the City Manager shall be authorized to sign and send non-controversial letters of support or opposition without a vote of the City Council; and

WHEREAS, letters of support or opposition signed in accordance with the provisions of this Resolution require a copy to be submitted to the Mayor and City Council.

NOW THEREFORE, BE IT RESOLVED, the City Council of the City of Banning authorizes the City Manager to execute and send letters of support or opposition consistent with goals adopted by the City Council.

PASSED, APPROVED AND ADOPTED this 10th day of September, 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. 2013-62 was duly adopted by the City Council of the City of Banning, California, at a regular meeting held of the 10th day of September, 2013, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT "A"

**STAFF REPORT AND RESOLUTION NO. 2010-82
APPROVED NOVEMBER 9, 2010**

**CITY COUNCIL AGENDA
CONSENT**

DATE: November 9, 2010

TO: Honorable Mayor and City Council

FROM: Andy Takata, City Manager

SUBJECT: Resolution No. 2010-82, "Authorizing the City Manager to Direct the Preparation of and Send Letters of Support or Opposition Consistent with Legislative Positions Adopted by the League of California Cities".

RECOMMENDATION: It is recommended that the City Council approve Resolution No. 2010-82, "Authorizing the City Manager to Direct the Preparation of and Send Letters of Support or Opposition Consistent with Legislative Positions Adopted by the League of California Cities".

JUSTIFICATION: The League of California Cities turns to cities to support legislation; due to the timing of certain legislative matters; often requests are not made within sufficient time for review and approval by the City Council. Any item the City Manager deems controversial would be brought forward to the City Council for action.

BACKGROUND: The City Manager receives and monitors all requests from the League of California Cities and shall update the City Council on legislation that the City and League have taken a position on, including any substantive amendments or issues that would impact the spirit of the City's adopted policies.

FISCAL DATA: There are no fiscal impacts associated with approving such authorization.

RECOMMENDED BY:



Andy Takata
City Manager

RESOLUTION NO. 2010-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE CITY MANAGER TO DIRECT THE PREPARATION OF AND SEND LETTERS OF SUPPORT OR OPPOSITION CONSISTENT WITH LEGISLATIVE POSITIONS ADOPTED BY THE LEAGUE OF CALIFORNIA CITIES.

WHEREAS, the League of California Cities turns to cities to support legislation; and

WHEREAS, due to the timing of certain legislative matters; often requests are not made within sufficient time for review and approval by the City Council; and

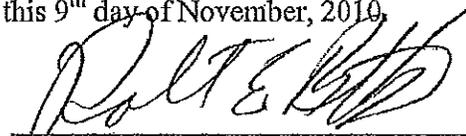
WHEREAS, the City Manager is responsible for updating the City Council on legislation that the City and League have taken a position on, including any substantive amendments or issues that would impact the spirit of the City's adopted policies; and

WHEREAS, the City Manager is committed to monitoring and informing the City Council of any legislative positions which may impact the City and its residents; and

WHEREAS, the City Manager shall be authorized to send certain letters without a vote of the City Council.

NOW THEREFORE, BE IT RESOLVED, the City Council of the City of Banning authorizes the City Manager to direct the preparation of and send letters of support or opposition consistent with legislative positions adopted by the League of California Cities.

PASSED, APPROVED AND ADOPTED this 9th day of November, 2010,



Robert E. Botts, Mayor
City of Banning

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


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

ATTEST:


Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

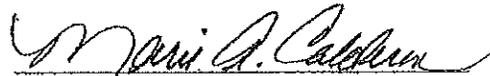
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-82 was duly adopted by the City Council of the City of Banning, California, at a regular meeting held of the 9th day of November, 2010, by the following to wit:

AYES: Councilmembers Franklin, Hanna, Machisic, Robinson, Mayor Botts

NOES: None

ABSENT: None

ABSTAIN: None



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

ATTACHMENT "B"

**STAFF REPORT AND RESOLUTION NO. 2012-89
APPROVED NOVEMBER 13, 2012**

**CITY COUNCIL AGENDA
REPORT OF OFFICERS**

DATE: November 13, 2012

TO: Mayor and City Council

FROM: Andy Takata, City Manager

SUBJECT: Resolution No. 2012-89, "Establishing the Intergovernmental Communications and Advocacy Committee"

RECOMMENDATION: The City Council adopt Resolution No. 2012-89, "Establishing the Intergovernmental Communications and Advocacy Committee."

JUSTIFICATION:

It is essential that we strengthen intergovernmental relationships and manage advocacy efforts on both a State and Federal level. It is envisioned that one of the first tasks of the Intergovernmental Communications and Advocacy Committee would be to continue to work on lobbying efforts and to develop strategies resulting in funding procurement on behalf of the City of Banning.

BACKGROUND:

At its regular meeting held on October 23, 2012, the City Council adopted Resolution No. 2012-83, "Approving the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings ("Manual")." The Manual governs the establishment and operation of advisory committees, commissions, other legislative bodies and non-governmental bodies.

The Intergovernmental Communications and Advocacy Committee ("The Committee") shall be composed of two members: the Mayor of the City of Banning, and a second Member of the City Council to be appointed pursuant to Section 6.4(b) of the Manual, as it may be amended in the future. The Committee is not to take the place of the City Council lobbying as a whole but rather to designate those individuals which would lobby in Washington, D.C. and Sacramento during pertinent times in an effort to maximize lobbying efforts.

The committee shall have the power to act and assist in various ways that include:

- Act as an evaluation committee in the review and selection of the City's State and Federal Lobbyists through a normal and customary RFQ/RFP process utilized to solicit interested firms. The Committee shall interview top candidates and make recommendations to the City Council and City Manager, or his designee, as to who/what firm(s) would best serve as our State and Federal Lobbyists.

- Act in an advisory capacity to the City Council and City Manager, or his designee, in all matters pertaining to the matters of federal or state legislative matters pending, or potential legislative actions, that may have material impact upon the City and/or its community.
- Assist the City Council and City Manager, or his designee, in the planning and implementation of intergovernmental communications with federal and state legislative bodies on matters of state/federal legislative concern to the City and its residents, and solicit the cooperation of public and private agencies interested therein.
- Assist and make recommendations to the City Council and City Manager, or his designee, for the implementation of state and/or federal lobbying efforts.
- Consider the annual budget for state and/or federal lobbying efforts to be conducted by the City.

RECOMMENDED BY:

Andy Takata by o.s.

Andy Takata
City Manager

RESOLUTION NO. 2012-89

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA ESTABLISHING THE INTERGOVERNMENTAL
COMMUNICATIONS AND ADVOCACY COMMITTEE**

WHEREAS, the City seeks to establish a committee of the City Council responsible for strengthening intergovernmental relationships and managing advocacy efforts on both a state and federal level; and

WHEREAS, on October 23, 2012, this City Council adopted Resolution No. 2012-83 approving the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings ("Manual"); and

WHEREAS, said Manual governs the establishment and operation of advisory committees, commissions, other legislative bodies and non-governmental bodies; and

WHEREAS, said Manual provides that the Brown Act shall apply to any committee which is (i) established by ordinance, resolution or other formal action, or (ii) has a fixed regular meeting schedule, or (iii) has continuing subject matter jurisdiction over a non-temporary issue, or (iv) which continues to conduct business in excess of 180 days, or (v) has a majority of membership officials from other Legislative Bodies.

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

SECTION 1. The above recitals are true and correct and are incorporated into the terms of this Resolution by this reference.

SECTION 2. Based on the foregoing recitals, the City Council hereby establishes the INTERGOVERNMENTAL COMMUNICATIONS AND ADVOCACY COMMITTEE ("Committee"), a committee of the City Council.

SECTION 3. The Committee shall be composed of two members: the Mayor of the City of Banning, and a second Member of the City Council to be appointed pursuant to Section 6.4(b) of the Manual, as it may be amended in the future. The Mayor shall serve as a Committee Member for the duration of his or her term as Mayor, unless the Mayor is removed from the Committee as provided for under Section 6.4(b) of the Manual, as it may be amended in the future. The second Committee Member shall continue to serve until that Member is either (i) no longer a Member of the City Council, or (ii) removed from the Committee pursuant to Section 6.4(b) of the Manual, as it may be amended in the future. If the second Committee Member becomes Mayor, the City Council shall appoint a new second Committee Member pursuant to Section 6.4(b) of the manual.

SECTION 4. Members of the Committee shall not be compensated for their service on the Committee.

SECTION 5. The Mayor is authorized to call meetings of the Committee. The Committee shall otherwise not have regular meetings.

SECTION 6. The Committee shall be subject to the provisions of the Brown Act.

SECTION 7. The Committee shall continue until/unless it is abolished pursuant to Section 6.4(b) of the Manual, as may be amended.

SECTION 8. Unexcused absences and vacancies in the Committee shall be resolved pursuant to the terms of the Manual. The Committee shall utilize the Manual for the conduct of its meetings and affairs.

SECTION 9. The Committee shall have the power and duty to:

- (a) Act in an advisory capacity to the City Council and City Manager, or his designee, in all matters pertaining to the matters of federal or state legislative matters pending, or potential legislative actions, that may have material impact upon the City and/or its community.
- (b) Assist the City Council and City Manager, or his designee, in the planning and implementation of intergovernmental communications with federal and state legislative bodies on matters of state/federal legislative concern to the City and its residents, and solicit the cooperation of public and private agencies interested therein.
- (c) Assist and make recommendations to the City Council and City Manager, or his designee, for the implementation of state and/or federal lobbying efforts.
- (d) Consider the annual budget for state and/or federal lobbying efforts to be conducted by the City.
- (e) Perform such other duties as may be prescribed by the City Council.

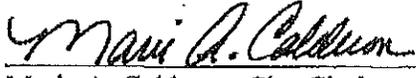
SECTION 10. The City Clerk shall certify to the adoption and passage hereof.

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



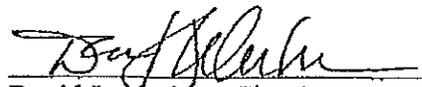
Don Robinson, Mayor
City of Banning

ATTEST:



Marie A. Calderon, City Clerk

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



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

CERTIFICATION:

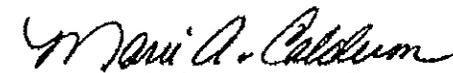
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-89 was duly adopted by the City Council of the City of Banning, California, at a regular meeting held thereof held on the 13th day of November, 2012, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Robinson

NOES: None

ABSENT: None

ABSTAIN: None



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

CITY COUNCIL AGENDA

Date: September 10, 2013
TO: City Council
FROM: David J. Aleshire, Aleshire & Wynder, City Attorney
SUBJECT: Appointment of Mayor Ordinance

RECOMMENDATION: Consider whether to change the rotational system of appointment of Mayor.

ALTERNATIVE ACTIONS: Either (i) Make no change to current rotational Mayor/Mayor Pro-Tem system, or (ii) Suggest further revisions/consideration of the proposed ordinance.

JUSTIFICATION: Prior to 2011, appointments were made to the seats of Mayor and Mayor Pro-Tem by a vote of the Council. On October 11, 2011, the City changed to a "rotational" Mayor/Mayor Pro-Tem system. Some City Council members have expressed the opinion that the system of mandatorily rotating a new Councilmember into the seats of Mayor and Mayor Pro-Tem each year can result in organizational instability and prevents Councilmembers who are otherwise qualified and supported by the Council from getting more than one year of mayoral experience. Thus, it has been proposed that the City may wish to return to its pre-2011 system of appointing the Mayor and Mayor Pro-Tem.

If the Council wishes to go back to a system of the Council majority appointing the Mayor either annually, or for a specific term, the current rotational system can be altered by Ordinance. This could be back on your next agenda.

Attached is the memo we prepared on this topic on April 2010.

BACKGROUND: Before 2011, the City Council appointed one of its members as Mayor and another as Mayor Pro Tem, as provided in Resolution 2003-06, with each serving a maximum of two consecutive one (1) year terms in office. On October 11, 2011, the City Council adopted the City's current method of designating the Mayor and Mayor Pro-Tem via an automatic "rotational" system. Under the current system there is a set rotation of a Councilmember into the seats of Mayor, Mayor Pro-Tem, and chair/vice-chair of the Successor Agency and Housing Authority. The rotation is implanted each year at an annual organization meeting in December.

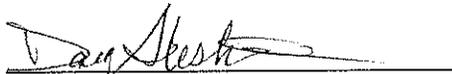
Each system (rotational vs. appointment) has its “pros and cons”:

	<u><i>Rotational</i></u>	<u><i>Appointment</i></u>
<u><i>Pros</i></u>	<p>(1) Sends message that each member is equally qualified and deserving to hold the offices of Mayor, Mayor Pro-Tem and chair/vice chair of other City bodies.</p> <p>(2) Predictable and gives all Councilmembers ample opportunity to serve in these offices.</p> <p>(3) Can encourage a spirit of cooperation in that each councilmember will eventually need their colleague’s votes.</p>	<p>(1) Person in mayoral/pro-tem seat is more likely to have fuller Council support because voted to seat by majority.</p> <p>(2) Possible appointments for up to two consecutive terms allows Mayor/Mayor Pro-Tem to become more trained and experienced.</p> <p>(3) Allows more political flexibility as Council composition changes.</p>
<u><i>Cons</i></u>	<p>(1) Limits the Mayor or Mayor Pro-Tem’s ability to become experienced because the Councilmember is vacated from the seat after only one year of experience.</p> <p>(2) Limits flexibility and can result in seat being held by an officer who is either disinterested in the position or lacks the support of fellow Councilmembers.</p>	<p>(1) Tends to be an irregular process for determining which Councilmember should be appointed (unpredictable).</p> <p>(2) Can occasionally result in disputes and controversy adversely affecting working relationships among Councilmembers.</p>

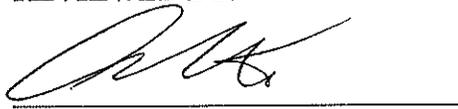
Finally, in the course of reviewing older City policies in re Council meeting and appointment protocols, we identified some older policies that contradict the new Manual. The “clean-up” changes proposed in the draft ordinance retract these outdated policies.

FISCAL DATA: No fiscal impacts are expected.

RECOMMENDED BY:


 David J. Aleshire, City Attorney

REVIEWED BY:


 Andy Takata, City Manager

CITY COUNCIL AGENDA

Date: October 11, 2011
TO: City Council
FROM: David J. Aleshire, Aleshire & Wynder, City Attorney
SUBJECT: Rotational Mayor Ordinance—First Reading of Ordinance No. 1442

RECOMMENDATION: Waive further reading and adopt the attached Ordinance No. 1442 establishing a rotation of the mayoral seat, entitled as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, SETTING FORTH A PROCEDURE FOR THE ROTATION OF THE OFFICE OF MAYOR AND OTHER POSITIONS HELD BY COUNCILMEMBERS

JUSTIFICATION: The City Council has expressed the opinion that each member elected to the Council is equally qualified and deserving to hold the offices of Mayor, Mayor Pro Tempore and chair/vice chair of various City boards. The use of a rotational appointment system for these offices is proposed for the Council's consideration in order to give all Councilmembers ample opportunity to serve in these offices. Moreover, a rotational system can encourage a spirit of cooperation in that each councilmember will eventually need their colleague's votes. This Ordinance No. 1442 is proposed pursuant to the Council's direction at the June 15, 2011, joint meeting.

BACKGROUND: Resolution 2003-06 currently states that the City Council appoints one of its members as Mayor and another as Mayor Pro Tem and each may serve a maximum of two consecutive one (1) year terms in office. There has been no regular process for determining which Councilmember should be appointed to these offices, which has occasionally resulted in disputes and controversy adversely affecting working relationships among Councilmembers. Additionally the Councilmembers serve on the boards of the Redevelopment Agency, and Housing Authority, and serve as chair and vice chair of these entities, and could rotate these various offices amongst themselves in an orderly basis. A rotational system could fairly give each City Council member an opportunity to serve as Mayor and could provide appropriate training by rotating Councilmembers through positions of greater visibility and responsibility.

Proposed Ordinance No. 1442 sets a rotation for the appointment of the offices of Mayor, Mayor Pro Tempore, and chair/vice-chair of the Redevelopment Agency and Housing Authority. The rotation is implanted each year via an "Annual Organization Meeting" that is held in December of each year. At the Annual Organization Meeting, the Mayor shall be appointed by a majority vote of the Councilmembers; the Ordinance states that the person appointed to be the new Mayor shall be the Mayor Pro Tem, with all other officers rotating into their new positions in accordance with the following rotational succession list:

- (a.) Mayor
- (b.) Mayor Pro Tem
- (c.) Chair of the Agency
- (d.) Chair of the Housing Authority
- (e.) Vice Chair of the Agency and Vice Chair of the Authority.

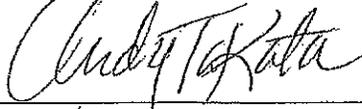
With the rotation of the person holding the office of Mayor, all other members shall move up one position, in order that the outgoing Mayor Pro Tem shall become the new Mayor, the outgoing chair of the Agency shall become the new Mayor Pro Tem, and the outgoing chair of the Authority shall become the new chair of the Agency.

FISCAL DATA: No fiscal impacts are expected.

RECOMMENDED BY:

David J. Aleshire, City Attorney

REVIEWED/APPROVED BY:



Andrew Takata, City Manager


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ORDINANCE NO. 1442

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, SETTING FORTH A PROCEDURE FOR THE ROTATION OF THE OFFICE OF MAYOR AND OTHER POSITIONS HELD BY COUNCILMEMBERS

WHEREAS, Councilmembers of the City Council of the City of Banning serve as Mayor and Mayor Pro Tem, and also as officers of the Redevelopment Agency and Housing Authority; and

WHEREAS, in the past, as provided in Resolution 2003-06, the City Council has appointed one of its members as Mayor and another as Mayor Pro Tem and each may serve a maximum of two consecutive one (1) year terms in office; and

WHEREAS, there has been no regular process for determining which Councilmember should be appointed to these offices, which has occasionally resulted in disputes and controversy adversely affecting working relationships among Councilmembers; and

WHEREAS, the office of the Mayor while generally under state law has no greater legal authority than other Councilmembers, yet the office is the visible representative and spokesperson for the City, and is a point of coordination between the City Manager and City Council; and

WHEREAS, it is the City Council's opinion that each member elected to the Council is equally qualified and deserving to hold these offices, and each Councilmember should be given ample opportunity to serve in one or both of these offices; and

WHEREAS, additionally the Councilmembers serve on the boards of the Redevelopment Agency, and Housing Authority, and serve as chair and vice chair of these entities, and could rotate these various offices amongst themselves in an orderly basis; and

WHEREAS, a rotational system could fairly give each City Council member an opportunity to serve as Mayor and could provide appropriate training by rotating Councilmembers through positions of greater visibility and responsibility; and

WHEREAS, the City Council wishes to distribute the duties, responsibilities, and recognition arising from the holding of City offices evenly and fairly so that during a Councilmember's four-year term, they will have the opportunity to serve in the maximum number of capacities; and

WHEREAS, a rotational mayor system encourages City Council harmony and good relations among its members.

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

SECTION 1. Section II.B.2.3 of the Rules of the City Council is replaced by the provisions hereof.

SECTION 2. A new Section 2.04.070 is added to the Banning Municipal Code to read, in its entirety, as follows:

2.04.070. Rotation of Mayor and Other Offices.

- A. General. The City of Banning has a council/manager form of City government. All five (5) members of the City Council are elected at large to four (4) year terms. Additionally, the City has related agencies including the Community Redevelopment Agency and Housing Authority. These entities have various officers, including chair person and vice chair person. The City Council believes that all councilmembers have the capability of performing these offices and should be given the opportunity to do so through a rotational system.
- B. Rotation of Councilmembers through the Office of Mayor and other offices.
1. The Mayor shall be selected by a majority vote of the Councilmembers in December of each year, which shall be known as the Annual Organization Meeting, for a one (1) year term.
 2. The persons serving as councilmembers of the City shall rotate through certain offices of the City and its constituent agencies in the order stated below, with the person serving as mayor rotating to holding the offices of vice chair of the Agency and vice chair of the Authority, or the highest unfilled office available in the rotation after the rotation of other incumbent councilmembers (pursuant to the "rotational succession list" below), following their completion of their term as mayor.
 - (a.) Mayor
 - (b.) Mayor Pro Tem
 - (c.) Chair of the Agency
 - (d.) Chair of the Housing Authority
 - (e.) Vice Chair of the Agency and Vice Chair of the Authority
 3. With the rotation of the person holding the office of mayor, all other members shall move up one position, in order that the outgoing mayor pro tem shall become the new mayor, the outgoing chair of the Agency shall become the new mayor pro tem, and the outgoing chair of the Authority shall become the new chair of the Agency.

4. If any councilmember should decline to serve in the position to which they would rotate to, they shall fall to the bottom of the rotation (positions of Vice Chair of Agency and Authority).
5. At the first Annual Organizational Meeting following any Council election, the rotation to the highest available office shall be made amongst the incumbent councilmembers. Thereafter, the unfilled offices shall be filled by any newly elected member of the Council. If there is more than one newly elected member, then the order among the new members shall be determined by the person who received the highest number of votes at the election taking the highest available office.

C. Removal

With a majority vote of the body, any officer holding any office governed by the rotational policy may be replaced, but in general, such changes should not be made in midterm, and if made, the rotation established hereunder shall be utilized to advance every officer to the next level

D. Vacancies

Any Councilmember appointed to fill a vacancy shall be added immediately to the bottom of the rotational succession list, and all other members on the succession list shall move up to a higher ranked position, if any.

E. Office of the Mayor Pro Tem.

The mayor pro tem will serve as mayor in the event of the absence of the mayor and will be appointed as the mayor when there is a vacancy in the office of mayor. The selection of the mayor pro tem will follow the rotation policy stated above in 2.04.070(A).

F. Duties.

The mayor, if present, shall preside as Chairperson at all meetings of the City Council. In the absence of the mayor, the mayor pro tem shall preside. In the absence of both the mayor and mayor pro tem, the next officer in the rotation succession list shall serve as chairperson. The chairperson shall preserve order and decorum. The chairperson may make or second any motion and present and discuss any matter as a member of the City Council. The person serving as mayor accepts the responsibility to be the City's official representative for all events where representation is necessary, except where otherwise provided by the Council, and for signing all contracts and official documents and correspondence.

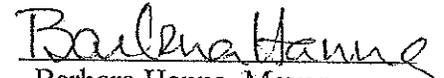
SECTION 3. Initial Selection.

Following the adoption of this ordinance, the first Annual Organizational Meeting shall be held on December 2012. At that time all Councilmembers shall be assigned to the rotational succession list by majority vote, decided for each office in succession from highest to lowest. Thereafter, in successive annual organizational meetings, the rotational succession list shall be strictly followed as provided herein.

SECTION 4. Supersedes.

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

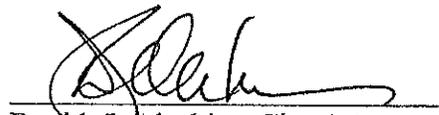
PASSED, APPROVED AND ADOPTED this 25th day of October, 2011.


Barbara Hanna, Mayor
City of Banning California

ATTEST:


Marie Calderon, City Clerk
City of Banning, California

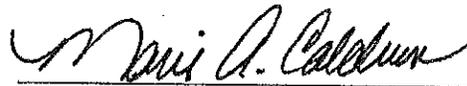
**APPROVED AS TO FORM
AND LEGAL CONTENT:**


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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1442 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11th day of October, 2011, and was duly adopted at a regular meeting of said City Council on the 25th day of October, 2011, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Machisic, Robinson, Mayor Hanna
NOES: None
ABSENT: None
ABSTAIN: None



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

ORDINANCES – INTRODUCTION

1. Ordinance No. 1442, Setting Forth a Procedure for the Rotation of the Office of Mayor and Other Positions Held by Councilmembers.
(Staff Report – David J. Aleshire, City Attorney)

City Attorney said that there was a Council workshop discussion of the process of the appointment of the mayor and their office made a prior report which outlined how many cities deal with the appointment of mayor issue. Basically the mayor serves for a two-year term and there is a meeting held and people vote and then that person serves. The idea was introduced concerning the rotational mayor system and this means that you establish some listing of the offices of the City and then rotate persons through those offices. The purpose of a rotational system is to give everybody a chance to do it and obviously there is a problem in that council terms are four years and since there are five council members it is impossible to guarantee that in a four-year period every council member will get to serve as mayor so with a rotational system it is important that people be committed to them so that it can last long enough that the rotation actually works. The communities that have tried to create a rotational system believe that giving everybody on the council a chance to serve in that position gives every council member a little more visibility, a little more understanding of the challenge of leading the council and being the overall representative of the city and the responsibility and it can build up better relations amongst council members. Of course, at the end of the day since three votes on the council can change the rules and every two years there is an election you can't totally eliminate the politics. The direction that they got from the Council was that making this an ordinance would hopefully make it a little more durable because to change an ordinance you would have to have first and second reading and there would have to be three votes. The specific ordinance that has been brought before the Council has several features to it and he went over those features especially the rotation in Section 2.040.070. B. He said that the person serving as Mayor would rotate to the bottom as listed and would be the Vice Chair of the Agency and Vice Chair of the Authority, the Mayor Pro Tem would become the Mayor, the Chair of the Agency would become the Mayor Pro Tem and the Chair of the Housing Authority becomes the Chair of the Agency. The ordinance goes on to try to deal with some uncertainties that could occur and he explained.

Mayor Pro Tem Machisic asked when this would become effective. City Attorney said it would become effective at the end of November but Section 3 says that the first Annual Organizational Meeting will be held in December 2012.

Mayor Pro Tem Machisic asked for the initial sequence of positions how will that be determined. City Attorney said the ordinance does not deal with that and there is no rotational system at that meeting. It is whatever ranking is established by the five members of the Council at that meeting.

Mayor Hanna said that one thought is that first of all anyone that has not been Mayor would be at the top of the list. For example, she would go to the bottom of the list since she is Mayor at this point if we were going to do it right away. So whoever had served most recently would be towards the bottom. So it would be done in order of when we were Mayor.

City Attorney said the ordinance does not preclude that so basically five council members in December 2012 can create whatever method they want to decide where people are at that meeting. Once the initial selection occurs from then on the rotational system applies.

Councilmember Franklin said in regards to Section C. Removal if a person is just removed by the vote of the majority then does that negate the whole system.

City Attorney said yes it does so you could leave Section C out altogether. He said he put in because of the idea that if for whatever reason a majority did remove somebody instead of then a scramble the idea is the rotational system. For example, what if you had a circumstance where the Council had a Code of Conduct and what if the person was the mayor was so outside of that code of conduct the council decided to remove him. Right now the clause says with a majority vote any officer may be replaced but you could make it a super-majority. You could make it that you can't replace that without a four-fifths vote. Basically you have to be unanimous of the remainder of the council to change that.

Councilmember Franklin said would we need to say something like it has to be for a cause and not just because.

City Attorney said the problem is nobody really knows what that means and at the end of the day if there is a majority of the Council to do something or other you can't really restrain them from doing that. They can always come back and change this ordinance; three people can change the ordinance. Councilmember Franklin said so maybe going back to your idea of a super-majority.

City Attorney said you could. At first he was going to leave it out and then he thought somehow that very unusual circumstance occurs we ought to try and keep that rotational system in place. So maybe it is more consistent with that idea to say super-majority.

Mayor Hanna opened the item for public comments.

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

John McQuown asked about somebody not wanting to be Mayor and how does it fit in the rotation.

Fred Sakurai, resident of Banning said the system is not broke why change it.

Don Smith, resident spoke in regards to someone declining to move up and where does he go in the list and his concern with super-majority.

Mayor Hanna closed the item for public comment.

There was Council discussion in regards to having something in the ordinance if a person doesn't want to move up and the issue of super-majority.

City Attorney asked the Council if they wanted to add the super-majority or not. **There was Council consensus not to add super-majority.**

City Attorney said in regards to someone declining a position and if you want something in the ordinance dealing with that there would be two ways of handling that. If they decline, they keep their position. The other is if they are declining the advancement, if they don't keep their position then the other thing is that they go to the bottom of the list. So would you prefer B, the bottom of the list? **There was Council consensus that they go to the bottom of the list.**

City Attorney clarified that he is going to add the language on the person declining.

Mayor Hanna asked the City Clerk to read the title of Ordinance No. 1442. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Setting Forth a Procedure for the Rotation of the Office of Mayor and Other Positions Held by Councilmembers to be amended by the City Attorney to add language on the person declining.

Motion Robinson/Machisic to waive further reading of Ordinance No. 1442. Motion carried, all in favor.

Motion Machisic/Franklin that Ordinance No. 1442 pass its first reading. Motion carried, all in favor.

REPORTS OF OFFICERS

1. Option for Direct election Versus Appointment of Mayor and Mayoral Committee
Appointment Procedures: Alternatives, Advantages and Disadvantages
(Staff Report- David J. Aleshire, City Attorney)

City Attorney said that this issue was actually brought up from comments by a couple of Councilmembers with one asking that we look at the issue dealing with rotation of the office of Mayor and another Councilmember asking that we look at the process whereby Councilmembers are appointed to committees. He said that they have also done a comprehensive memo that deals with the subject of the directly elected mayor and also deals with appointments to commissions. He said that their firm is still actually new in this City so they have not actually gone through the codes and ordinances dealing with commission appointments and so forth and wanted to deal with it comprehensively. He said he was not going to talk about the directly elected mayor. It is discussed in the memo and was not the subject of what you wanted to deal with and if somebody wants to ask him a question about that, he will deal with it.

City Attorney said that in regards to the subject of the rotational mayor their memo has a summary of the principal points of their findings and he summarized those. First of all, for general law cities which Banning is, the position of Mayor is basically a ceremonial position. The Mayor does not have significantly more power than other Council members. However, just the fact of the Mayor being the presiding officer obviously puts the Mayor in a very significant position in terms of directing the meeting and how matters are considered and under Roberts Rules of Order the Mayor basically makes those determinations unless a majority of the Council were to overrule that. Cities have a whole variety of ways of filling the office of mayor and other than the directly elected Mayor position which is created by statute and election in the community, the office of Mayor is ultimately determined by three members of the Council. It becomes an appointed position and it is the Council itself that has the power to appoint that officer as their presiding officer. Some cities have created a rotational system. What that basically means is that on some basis and probably the most frequent bases would be an annual. The office of mayor, the incumbent of that office moves out of the office and some other council member moves into the office. There are cities that have written rules as to how that rotation will occur and there are other cities that do it basically by tradition and in an unwritten manner. Whether there is a written policy or whether it is just tradition how you do it, the fact of the matter is, that with three Council votes the system can be thrown out and be done a different way. He said that some cities that have had a written policy kind of believe that if they go through the trouble of establishing that, it gives it a little more staying power.

City Attorney went over the advantage and disadvantages of the rotational mayor system. He said that if the Council wants to talk about the rotation you would need to decide whether you want rotation or not and then if you do, we would have to talk about issues like how often, do you want it written or just an understanding, what are the offices included, are we just going to include just the Mayor and the Vice Mayor or do you want to include the Agency offices and then we would have to talk about what should the order be of the rotation. So if you want to move into that conversation that is what we would have to deal with.

City Attorney said in regards to the issue of making appointments to basically Council committees or representatives to different entities and so forth, your adopted policy the way he reads it, it seems to talk about that the appointment is basically by the Mayor with the approval of the Council. In effect, the way he reads that language it means that the Mayor nominates but he or she cannot fill the position unless the rest of the Council concurs so if the rest of the Council does not approve of the nominee they can vote that down. Again, that is just in the Council's policy. There is another part of the policy that sort of talks about something different but he thinks that it has probably intended to deal with the commission appointment issue and that basically said that each Councilmember got to make an appointment. When you look at your commissions you had some commissions that basically said that by appointment of each Councilmember. What they found out was that in 2006 the Council had a whole staff report on how appointments ought to be handled. It basically said that appointments to the commissions will be done the same way it is done with the Planning Commission and the Planning Commission basically says it is with the approval of the Council. So it basically doesn't give anybody the right to nominate or start the process, it just requires the whole Council to have agreement. In this staff report the staff recommendation was that this be applied to all commissions and he thinks that was the Council's intent and that is what the City Clerk has been doing however, he doesn't think that the ordinances ever got corrected to be consistent with that staff report. So in addition to the rotational Mayor issue he thinks that the Council needs to deal with two other issues. You need to indicate whether in terms of the appointment to Council committees where he is construing your rules to be Mayor nominates and Council has to consent is that okay and you want to continue with that or do you want to change it. And then the second issue with respect to making appointments to commissions is it still your intent to abide by what you did in 2006 in which case his office will go back and correct the ordinances to be consistent with that.

Councilmember Franklin said the City Attorney also has in the report information in regards to directly elected Mayor by the people and she would like the City Attorney to summarize some of that information also.

City Attorney said there are several code sections in State Law that provide that even in a General Law City you may put a question to the voters as to whether to have directly elected Mayor. This can be put forward at any regular election and the voters would be asked the question of whether they would like to directly elect the Office of the Mayor. There is a second question that you are required by the statute to put on in that same election and that is whether the term of office of the mayor would be a two year term or a four year term. If you had a directly elected Mayor there are two other things that are different than the normal General Law City and one is that there is the ability of paying the directly elected mayor more money than the compensation to other council members. The second thing that is different is under a directly elected regime the statute is actually very specific about how the appointing process occurs and it actually specifies that it would be the process where the Mayor nominates and the rest of the council has to approve. The City Attorney explained further about the directly elected system and how it works in some cities that he represents and he would say to his mind that there is a very strong disadvantage of that system and that disadvantage is that whenever you ask the voters whether you want a two year term or a four year term, he has never had the voters select the four year term. They always prefer the two year term. The disadvantage of the system is that what happens when you set that up right now we have three council members up in one election and two up in the other so if you go to a directly elected

mayor, well the mayor's term is up every two years and so the other two council seats align so that two of them are up at one time and then four years later the other two are up so the mayor's seat is up with two council members and then in the next election the mayor's seat is up again with the other two council members. What that means is that there are always two council members who are not up for election, who are incumbents who can run against the mayor for the mayor's seat. So this creates a dynamic where every two years some incumbent councilmember is running against the mayor and it just creates the opposite of trying to get all the council people working together. It creates a lot of instability on the council to have the mayor's seat up every two years.

City Attorney said one last point the other thing is if that incumbent councilmember is elected to the mayor's seat, then you have a vacancy and then you have to figure how to fill that seat which could mean you have to have another election to fill the vacated seat by the incumbent councilmember that got elected to be the mayor.

Mayor Botts opened the item for public comments.

Matthew Clarke addressed the Council stating that the City Attorney had mentioned that no matter what is decided this could be wiped out completely and started over from scratch again by three new council men or women. One of the ramifications of the citizenry is that they can put this up on the ballot and they themselves determine that they want X, Y and Z and what is the power of the Council to override that vote of the citizenry as compared to just three city council men or women saying no we don't want rotation this time but five years from now we do. What if the citizens put something on the ballot and say no we want this system and what are the ramifications.

City Attorney said an initiative measure that was put on the ballot and voted by the citizens can only be amended by another initiative measure approved by the citizens.

Councilmember Franklin said if we were to select the directly elected mayor could the ordinance include, if it were passed by the voters, a piece that would say that if a sitting councilmember was elected as mayor, that the next person or something to the effect of the next person with the next highest votes would then get into that seat so it would not create the need for another election.

City Attorney said if we were a Charter City, the answer is clearly yes. It is not quite clear with a General Law City since there is nothing in the State statutes that creates that option. He is not aware of a General Law City that has adopted that provision. It makes perfect sense but he would have to look in more detail to be sure of that.

Fred Sakurai, 4985 Bermuda Dunes addressed the Council stating the system is not broke; why fiddle with it. We have had a half hour of discussion saying what we can and cannot do and changes that we would have to make. We are working fine as it is. We have a new Mayor every two years and if a Councilmember is on the Council for that period and does fine, great. She or he will be elected to the office of Mayor. As far as the appointments he thinks that most of them know what led to that issue. He thinks that five adults would get together and determine who works on what commission or committee and settle on something. Why fiddle with something that works.

Christa Baird, 1036 Charles Street addressed the Council stating that she disagrees and she is not so sure that it really does work. She thinks rotating it is a great thing. She said that she has seen people, at least as it seemed to her, that people were ditched or not given an appointment or whatever and it seemed to her to be a personal means instead of for the benefit of the City. If we could get passed some of that personal type of issues by rotating the positions and appointments, we maybe able to do deal with the matters at hand more efficiently.

Mayor Botts closed the item for public comments.

Mayor Botts asked if there was interest in rotational appointment of the Mayor.

Councilmember Franklin said that she is more interested in the directly elected Mayor mainly because that allows the public to have more say and she thinks as it is important as people are becoming more and more interested in what is going on in the world and our city. They should have the option of saying whether or not they want a directly elected Mayor and with the election coming up in November that could be done in a way that would not cost the City additional money because we already have an election coming up.

Mayor Botts said that he would concur with what was said and would like to go down that path with much more information on the directly elected mayor. Councilmember Robinson concurred.

Mayor Pro Tem Hanna said she thinks that in a General Law City such as ours that the city is going to make the most progress if the Council works together if we decide on what we want to support as a team and push forward on that. Anything that differentiates one of us from that team group effort is a problem for her and it is an illusion to think that someone is the Mayor and is therefore going to be able to do something. They can't unless they have support. She believes that being a mayor is an opportunity to offer leadership and she believes that each Councilmember is equally capable of providing that and should be given the opportunity. Since she has been on the Council since 2003 we have had people, in her estimation, who have offered good leadership, strong leadership in difficult times and people who have not and we have survived. She believes that it should be rotational and that each position would be in the rotation and that it would be done by seniority with those who have served as Mayor in their most recent terms going to the bottom of the list. She thinks that would really be to the benefit of the City that we could move forward and make progress.

Councilmember Franklin said what she is hearing Mayor Pro Tem Hanna say is that people should not have the right to make that decision for themselves.

Mayor Pro Tem Hanna said yes, she would agree. She thinks that by giving them that opportunity it is promoting the notion that the Mayor is somehow important when in fact the Mayor is important as a Councilperson. The Mayor cannot do anything in and of themselves. If you were Mayor of Banning as a directly elected Mayor but you couldn't get two people to support a sister city relationship with Haiti, it is not happening.

Councilmember Franklin said she doesn't think that just because you say a person is a directly elected that they would necessarily be any different than any Councilmember that is directly elected because if they don't have any more rights, then their vote is still going to be the same and it doesn't

matter whether they agree or disagree on any issue. If a person is directly elected by the people, at least we would know that is who the people are actually saying this is who we want as the face of the City.

Mayor Botts asked Councilmember Franklin if it was her intent that we would try to do this for the November election if possible.

Councilmember Franklin said if it is possible and it is her understanding if there are any costs, it is very minuscule.

Mayor Pro Tem Hanna said if this could be put on the ballot for November for a directly elected mayor, would we at the same time have a campaign for a directly elected mayor so if they vote yes, then someone becomes mayor or would that happen in two years time.

City Attorney said he is not sure about that and thinks that it would probably come in the next election because when it is time for filing your statements and so forth it is not an office that exists.

City Attorney said he gave the Council the general information and now if he is to come back with more information on the directly elected mayor we would be talking about the actual ordinance, what it would look like, what election we would be talking about, election costs, etc.

Councilmember Machisic said that he sees some of these signs around campaigns from different politicians and they talk about less is better. If we go ahead and add another layer, there is going to be an expense for a general election and there is going to be one every couple of years. As far as he is concerned one of the things that we need to do as a Council is to work closer together and eliminate personal concerns that we have for the good of the City. He thinks that a rotational process is the way to go. Each of us have been elected on our own and we are not independent of anything and he feels that by being elected people have enough confidence in you that you should be able to take your share of responsibility at some point in time. As an example the biggest City in California, if you look at what is happening in Los Angeles that shows you some of the things that are happening and the Mayor and the Council are in an impasse. The mayor is elected by everybody, the council is elected by different divisions within that city and the mayor cannot do anything without council approval and the same would be true here. He would like to think of the Council in a town of our size as being more collegial and he would like to see less politicking. He thinks that is one of the problems that we have had with the mayor's position is that there is some political intrigue in the background and would like to see it eliminated so that we can least move ahead with the city and not be worried about who is going to be Mayor.

Mayor Botts said that there are three people that are supporting direct election of the mayor. He said that in regards to appointments is the Council of the understanding as the City Attorney indicated in regards to the 2006 approval by the City Council to say that it is advise and consent and that the Mayor comes up with a list and looks for approval by the Council.

Mayor Botts opened the item up for comments on the direct election of the mayor.

Don Smith said that he agrees with what the City Attorney said that no matter how you decide whether to do rotational or not to do rotational or doing it in writing or don't do it in writing that the next Council could have its own opinions and do it the way they want which is the way he thought it should be and each Council needs to be comfortable with how it picks its chairman that we call the Mayor. However, we suddenly got off that topic and said instead now we are now going to take a survey, an informal vote, as to whether we should be moving forward with a general election of the mayor which he has a stronger opinion about than whether they should or should not be rotational and he thought the City Attorney did a real good job of the pros and cons of each way. In a perfect world where there were no politics and what he had was five governing people working together for the betterment of Banning, direct elections would be fine but we know that there is politics involved. And now what we are going to have is for sure if we have a directly elected mayor, every two years we are going to have a majority of the Council up for election with special elections to follow when the Council people are running against each other for the job of mayor which we all know will happen. Suddenly we have this group that has this really minor annoyance of who gets to be the king and people get their feelings a little hurt when they are not chosen but they get by that quickly and start once again working together and there is not really any politics involved in who is going to be the mayor. If you have a direct election there is going to be an amazing amount of politics involved in who is going to be the next mayor that is going to directly impact the ability of this Council and future Council's to work together and actually accomplish things in a timely manner. Think about it and it is not just you. If you do this, it is twenty years from now with people we don't know running against each other for a whole year attacking each other and then coming up here having to be collegial with each other. It is probably not going to work.

Matthew Clarke said unless I remind you City Council our founding fathers establish a government that had three components – a legislative branch, executive branch and a judicial branch. To invoke and say that one of those branches is an unnecessary layer; shame on you. To be able to say that the will of the people would not be necessary; no, that is wrong. And to criticize probably one of the top three greatest cities in this world, the City of Los Angeles, because they have disparity between its mayor and city council he doesn't see the City of Banning with a one billion dollar budget, he doesn't see the City of Banning with 10,000 policeman out front, he doesn't see the City of Banning with one of the probably best fire departments in the world. So to criticize the City of Los Angeles for having a mayor may not be all that wise to do. Keep in mind that it is a government by the people, for the people, of the people and not of the council, by the council, for the council.

Charlene Sakurai said you are the will of people whether you directly elect a mayor or not; you are all directly elected. The one thing that she wants and expects with the full knowledge that everyone has different talents and strengths is competence. That is the one thing that we all expect. We have different ways of measuring it sometimes but that is what we want and that is what she expects. If you rotate the mayor, if you spin to it, if you get elected to it, that is the one thing that she wants. After listening to the legal opinions and everybody else's opinions it seems like the thing that would cause the most disruption on a routine basis is the constant elections and the jockeying to be a part of that. But in the long run she is going to vote for who she thinks is competent and that is what she expects once everybody is up there and she doesn't think she is alone in that.

Councilmember Hanna said in regards to appointments she has seen mayors in the past in Banning gain a whole lot of power because the Council acceded that power to the mayor. Mayor Botts had to leave a meeting that was just before his surgery and she brought up kind of spontaneously to the rest of the Council to look at this appointment system because she was noticing kind of a power creep which we started with this 2006 memo with the Mayor making the appointments and we may have had votes at one point and then it went to lets have a consensus and then it went to essentially I am making the appointment. That is how it kind of happened and she would like to encourage that we go back to what we have in writing that we actually have to have a vote of the Council to approve or disapprove any mayoral recommendation for an appointment.

Mayor Botts said that he concurs with that and that has been his approach.

City Attorney said in regards to commissions the language right now is that Council approves. so you have to get three votes of the Council and nobody has any special power to nominate and so the intent would be that is the system of the Planning Commission and we would extend that to all the commissions and make sure everything conforms and is that correct. **There was Council consensus that was correct.**

Mayor Pro Tem Hanna said she had mentioned to the City Manager that at one point they also approved a Design Review Committee that was going to be different than any other committee as part of the development process and the Design Review Committee for example was the only committee that we would allow people who are not residents of Banning to be a part of. That was never realized or developed and she would like to have staff take a look at that and see whether in fact we did approve it and if we did, does staff want to recommend proceeding with it or should we drop it.

City Attorney said that they could look into the background and report back to the Council.

Councilmember Franklin said if we are cleaning things up she would like to see if they could also talk about all the other committees so that we know which committees are actually active, how often they meet, how we are going to get feedback from those committees because in looking at the list that we have here, she didn't even know they had some of these committees. Also at the same time look at whether or not we would want to increase the number of committees we have because we have had a lot of talk about whether or not to have an airport commission or other groups and is this even an appropriate time to be looking at that.

City Attorney said he is clear on how they are going to deal with commissions. On the issue of appointments to Council committees is the intent that the process be the same as with the commissions that it is the whole Council or would it be the process that he construes it to be under the policy manual that it is the Mayor with the consent of the Council. **There was Council consensus that it would continue with the Mayor with the consent of the Council.**



o/k

MEMORANDUM

TO: HONORABLE MAYOR AND MEMBERS OF THE BANNING CITY COUNCIL
ANDREW TAKATA, CITY MANAGER

FROM: DAVID J. ALESHIRE, CITY ATTORNEY
HEATHER KENNY, DEPUTY CITY ATTORNEY

DATE: APRIL 2, 2010

RE: OPTIONS FOR DIRECT ELECTION VERSUS APPOINTMENT OF MAYOR AND
MAYORAL COMMITTEE APPOINTMENT PROCEDURES: ALTERNATIVES,
ADVANTAGES AND DISADVANTAGES

I. INTRODUCTION & SUMMARY OF CONCLUSIONS

The City Attorney's office has prepared this memorandum in response to the City Council's inquiry regarding: (i) the advantages and disadvantages of a rotational mayoral system; (ii) the procedures and statutory requirements of a directly elected mayor; and (iii) the process for appointing councilmembers to various committees or appointing commissioners under each system, including the current system.

Under California law, there are two systems for picking a Mayor; either by appointment by a majority of the Council or through direct election by the voters. Currently, the City of Banning ("City") has an appointed mayoral system without a strict requirement for rotation.¹ The only constraints in Banning's appointment system are as follows: A Councilmember may be elected to a maximum of two consecutive one-year terms in the same office.² A Councilmember who has been elected to serve as Mayor or Mayor Pro Tem for two consecutive one-year terms may be reelected to the same office if such Councilmember has not served in the office for two or more years immediately preceding such reelection.³

In a rotational system, each Councilmember works his or her way up to Mayor Pro Tem and is then "elected" by the rest of the Council to the position of Mayor. At the end of his or her term as Mayor, the Councilmember moves back down to the bottom rung of the ladder. Any new Councilmember elected generally takes the bottom rung in the ladder. However, the key

¹ Rules of the City Council, Section II, Paragraph B, Subsection 2.3(a)(1) states: "The City Council shall meet annually to elect one of its members as Mayor and another of its members as Mayor Pro Tem." There is no requirement for a rotation among members.

² *Id.* at Subsection 2.3(a)(2).

³ *Id.* at Subsection 2.3(a)(3).

Honorable Mayor and Members of the
Banning City Council
Andrew Takata, City Manager
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aspect of a rotational system, as described in this memorandum, is that the mayoral position is changed annually, by a pre-established system irrespective of personal considerations.

We would like to summarize the main points addressed in this memo.

1. For general cities without directly elected mayors, the position of Mayor is largely ceremonial (though even in directly elected systems the powers of the Mayor are largely the same as other councilmembers).
2. Often, cities with rotational mayoral systems have unwritten policies, although there are cities with written policies. We have included two examples as Exhibits "A" and "B." Although some jurisdictions have a good track record adhering to a rotational system, with three council votes the system can be altered, even where there is a written policy.
3. There are advantages and disadvantages to having a rotational mayoral system. For example, such a policy can give all councilmembers an opportunity to serve as mayor and mayor pro-tem, allowing all councilmembers to gain experience and giving the appearance of fairness. Moreover, a rotational system can encourage a spirit of cooperation in that each councilmember will eventually need their colleague's votes. However, a rotational system may put a councilmember in the mayoral position who does not reflect the majority of the council which is where rotational schemes often breakdown.
4. Lack of council consensus concerning rotational systems has led cities to adopt directly elected mayoral systems which are governed by State law. Directly elected mayoral systems must be adopted by the voters, so shifting council majorities can't alter the system.
5. There are separate statutes regulating directly elected mayors, including laws pertaining to salary. A directly elected mayor has the power to nominate individuals to regional, as well as local, boards, commissions and committees with the approval of the council (mayor must nominate and council approve).
6. A number of cities have switched from rotational mayoral policies to directly elected mayors with success. Cities can rarely switchback as given the choice, voters prefer direct election. One city, El Monte, recently tried via initiative to switch from directly elected mayor to a rotational mayoral system but the initiative failed.
7. The Rules of the City Council give the mayor the power to appoint Councilmembers to all positions on committees and commissions as

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representatives of the City on non-City boards and commissions after consultation with the City Council, but other policies require Council "approval" for ad hoc "Council Committees" (2x2) while still other ordinances and policies contemplate one appointment by each Councilmember. These policies could be made more uniform by the Council.

II. ANALYSIS

1. For General Cities Without Directly Elected Mayors, The Position Of Mayor Is Largely Ceremonial (Though Even In Directly Elected Systems The Powers Of The Mayor Are Largely The Same As Other Councilmembers).

As a general law city, and under the City of Banning's ordinances and policies, the Mayor's job is to attend ceremonial functions, chair meetings,⁴ preserve order and decorum,⁵ and perform a variety of tasks representing the City. The Mayor is often the "face" of the City. However, on most matters that come before the Council, the Mayor's vote is just one of the five.

The Mayor does chair council meetings, and as chair has the ability to direct debate and frame issues, and this can be significant. It also can set the tone for public perception of the City.

The Mayor's formal duties include: (i) signing all warrants drawn on the city treasurer; (ii) all written contracts made or entered into by the city; (iii) and all instruments requiring the city seal.⁶ The Mayor's duties may include administering oaths and affirmations, and taking affidavits and certifying them under his or her hand.⁷ Further, the Mayor may acknowledge the execution of all instruments executed by the City and required to be acknowledged.⁸ The position does not come with any increased salary or benefits.

The case of a directly elected mayor is discussed below in Section 5, but in most respects the powers are similar in appointive and directly elected systems. One significant difference is that Government Code Section 40605 specifically allows the directly elected mayor to nominate individuals for appointment to boards, committees and commissions, with the approval of the council. Directly elected mayors may also be compensated differently from the rest of the council. Where most people get the impression of mayors having significant powers has to do with charter cities. Charter cities can create a "strong mayor" system. This is outside the scope of this memorandum.

⁴ Rules of the City Council, Section II, Paragraph B, Subsection 2.3.

⁵ *Id.* at Subsection 2.3(b): "The Chairperson shall preserve order and decorum."

⁶ Cal. Gov. Code § 40602.

⁷ *Id.* at § 40603.

⁸ *Id.* at § 40604.

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2. Often, Cities With Rotational Mayoral Systems Have Unwritten Policies, Although There Are Cities With Written Policies. We Have Included Two Examples As Exhibits "A" And "B." Although Some Jurisdictions Have A Good Track Record Adhering To A Rotational System, With Three Council Votes The System Can Be Altered, Even Where There Is A Written Policy.

To illustrate how rotational mayoral systems work, in this section we will describe several varieties. Cities vary as to whether the systems are set forth in writing or carried out by tradition. The argument for written policies is that they are more likely to be followed. But in the end, even a written policy can be changed by three votes, though if enacted by ordinance, the amendment process would be more cumbersome.

A. Indian Wells

The City of Indian Wells passed a resolution codifying into their Policy Manual the following:

- The order of mayoral succession is determined by the length of the term of incumbency, as defined by the date of election. When two or more councilmembers have equal terms of incumbency, the order is determined by the highest number of votes received.
- The outgoing mayor's name rotates to the bottom of the previous year's mayoral succession list, with all other names moving up one position, in order that the outgoing mayor pro-tem becomes the new mayor and the next councilmember on the list becomes the new mayor pro-tem.
- Newly elected councilmembers are added to the bottom of the mayoral succession list, following the outgoing mayor in that election year's council reorganization. When there are two or more newly elected councilmembers, the order is determined by the person who received the highest number of votes in the election.
- Any councilmember appointed to fill a vacancy is added to the bottom of the mayoral succession list. In the event the appointment is to fill a vacancy at the mayor or mayor pro-tem's position, all other names on the succession list move up one position.

As you can see, Indian Wells was thorough in thinking through several different scenarios (e.g., what happens when a new councilmember gets elected, what happens if someone gets appointed, etc.). Some policies, such as Palm Desert's below, simply deal with who will

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become mayor and mayor pro-tem and not necessarily the actual rotation of the other councilmembers.

B. Palm Desert

In 2001, the City Council of the City of Palm Desert passed a resolution stating a policy for the qualifications of mayor and mayor pro-tem. Unlike the City of Indian Wells, Palm Desert did not express its desire that each Councilmember necessarily rotate through the positions of Mayor and Mayor Pro-Tem. Rather, the Resolution set forth specific criteria that must be met by a Councilmember serving in each position:

“[T]he appointments of Mayor and Mayor Pro-Tempore shall be made on an annual rotating basis, and no one Council member shall serve a term in either office to exceed a one-year period of time...prior to any member of the Council being appointed as Mayor such Council member shall have been a member of the Council for approximately two years and the Mayor Pro-Tempore shall have been a member of the Council for at least one year prior to being selected for those respective offices.”⁹

Thus, Palm Desert offers another option – a policy that ensures experience in the offices of Mayor and Mayor Pro-Tem, but does not bind the Council into a rotation where each member is guaranteed an opportunity to serve, if that is not what the Council desires.

C. Huntington Beach

In 1990, Huntington Beach adopted a rotational system in choosing its mayor and mayor pro tem. At adoption, the current mayor pro-tem became mayor. Under the policy, the councilmember with the next most consecutive years of council experience succeeded that councilmember as mayor pro-tem and moved next in line to become mayor. If two members had the same amount of council experience, the one who received the most votes in the last election became mayor pro tem. So, similar to Palm Desert, the policy was more concerned with the selection of mayor and mayor pro-tem than an actual rotation where each councilmember was given an opportunity to serve in the role.

Prior to adopting the policy, the City Council had simply elected a mayor and mayor pro-tem, which had caused a great deal of strife and “back room politics.”¹⁰ Although it appears the

⁹ Resolution 01-110, A Resolution of the City Council of the City of Palm Desert, California, Setting Forth a Policy on the Office of Mayor and the Office of Mayor Pro Tempore.

¹⁰ Los Angeles Times, Huntington Beach Green Picked Mayor in Rotation System, January 24, 1990, http://articles.latimes.com/1990-01-24/local/me-702_1_mayor-pro, last visited March 3,


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policy was adopted as an ordinance, we could not locate a copy of it in the most updated municipal code. In addition, at this time, the City of Huntington Beach is considering moving to a directly elected mayor position.¹¹

3. There Are Advantages And Disadvantages To Having A Rotational Mayoral System. For Example, Such A Policy Can Give All Councilmembers An Opportunity To Serve As Mayor And Mayor Pro-Tem, Allowing All Councilmembers To Gain Experience And Giving The Appearance Of Fairness. Moreover, A Rotational System Can Encourage A Spirit Of Cooperation In That Each Councilmember Will Eventually Need Their Colleague's Vote. However, A Rotational System May Put A Councilmember In The Mayoral Position Who Does Not Reflect The Majority Of The Council Which Is Where Rotational Schemes Often Breakdown.

In a rotational mayoral system, there is an annual change in the office of mayor which, theoretically, gives each member of the council an opportunity to be mayor and the opportunity to be the "face" of the city. Further, it gives each councilmember the experience of running the meetings and becoming familiar with the procedural rules governing such meetings, as well as handling constituents, working closely with staff members, etc.

There is also an idea that rotating the position of mayor among all five councilmembers provides a sense of fairness and camaraderie among the city council. Each councilmember knows that if he or she remains on the council long enough, he or she will eventually have a turn at the gavel. It can encourage the council to work together as a team.

Despite the written policies reviewed above, often the rotational policies are by "tradition," meaning they are informal and unwritten. Accordingly, there is nothing to stop a majority of the city council from skipping over a councilmember in line for the position of mayor pro tem or mayor.

Several of our municipal clients have had very successful traditions of rotating the office of mayor. Signal Hill puts Councilmembers in the following positions: Mayor, Mayor Pro Tem, Chair of Redevelopment Agency, and Vice Chair of the Agency. Councilmembers rotate

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¹¹ Action Minutes, Charter Review Commission (October 6, 2009), http://search.surfcity-hb.org/search?q=cache:1LuH1TOIEHoJ:www.huntingtonbeachca.gov/government/boards_commissions/files/charter_review_commission_minutes_100609.pdf+mayor&access=p&output=xml_no_dtd&site=default_collection&ie=UTF-8&client=default_frontend&proxystylesheet=default_frontend&oe=UTF-8, last visited March 3, 2009.

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through these positions annually, with the Mayor rotating into the no office position. Any new Councilmember goes to the end of the rotation. This rotation, while not a written policy, has been maintained successfully for over 30 years. Of course, there have been 3-2 Councils during this period, but Councilmembers have worked together sufficiently to respect the rotation.

Of course, this is not true everywhere. The rotational tradition breaks down in cities with contentious majorities, or where a councilmember personalizes their conflicts with other councilmembers. In this situation, they may get skipped or the rotation system may be scrapped. For example, in the City of Pittsburg they had a rotational mayoral policy. However, in 2000, the City Council made the local San Francisco newspaper when they "[broke] with decades old tradition" and skipped over the Vice-Mayor (the equivalent of Mayor Pro Tem) and appointed someone in the Council majority as Mayor instead.¹²

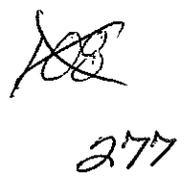
As another example, in the City of Placentia, one unpopular Councilmember was passed over numerous times for the positions of Mayor Pro Tem and Mayor, even though the City had a purported rotational mayoral policy. This is true for several other cities that we spoke to during our research.

Accordingly, having a rotational mayoral policy is no guarantee that each councilmember will serve his or her turn as mayor and/or mayor pro tem when the time comes. This is true even where there is a written policy. The City of Menlo Park had adopted a rotational mayoral policy in 1993, which basically stated that the "mayor's gavel" would rotate to each councilmember. However, in 2006, the majority of the Council ignored the policy, (as it had done one time before), arguing that it was simply there to "guide" future Councils, not bind them. The motion to make the policy an enforceable ordinance was defeated 3-2 (by the same majority who had ignored it in the first place).¹³

In the end, there is no way to guarantee a successful system free from the will of three councilmembers. Our experience is that a rotational system can only last so long as councilmembers maintain healthy council relations.

¹² SFGate.com, Pittsburg/Council Breaks Tradition of a Rotating Mayor, December 6, 2006, http://articles.sfgate.com/2000-12-06/bay-area/17672964_1_mayoral-vote-vice-mayor-bob-lewis-chairing-meetings, last visited March 3, 2010.

¹³ Palo Alto Online, Menlo Park Squabbles Over Mayor Policy, January 26, 2006, http://www.paloaltoonline.com/news/story_print.php?story_id=2311, last visited March 3, 2010.



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4. **Lack Of Council Consensus Concerning Rotational Systems Has Led Cities To Adopt Directly Elected Mayoral Systems Which Are Governed By State Law. Directly Elected Mayoral Systems Must Be Adopted By The Voters. So Shifting Council Majorities Can't Alter The System.**

Where rotational systems have failed, one result has been to go to a statutory scheme provided under State law permitting the election of the mayor directly by the voters. An example is one of our clients, the City of Lawndale where it was the rotational turn of the sole woman councilmember, who was going to be up for election. She was passed over, and then became an advocate for direct election. Eventually this was placed on the ballot and passed overwhelmingly.

The statute providing for direct election provides as follows:

“At any general municipal election, or at a special election held for that purpose, the city council may submit to the electors the question of whether electors shall thereafter elect a mayor and four city councilmen, and whether the mayor shall serve a two-year or four-year term...”¹⁴

A little more than one-third of California's incorporated cities have directly elected mayors ranging from Yountville (population approximately 3,000) to Los Angeles (population approximately 4 million).¹⁵ A directly elected mayor is distinct from a rotational mayor. In general, many duties are the same - the mayor is a member of the city council and has all of the powers and duties of a member of the city council.¹⁶ A further description of the powers and duties follows in Section 5 below.

In order to change from a rotational mayor to a directly elected mayor, a city must go through a statutory process. First, at any general election, or at a special election held for that specific purpose, the city council submits to the voters the question of whether they would prefer an elected mayor and four councilmembers. A second question on the ballot is whether the mayor should serve a two-year term or a four-year term.¹⁷ If the majority of the voters vote “yes,” the office of the mayor will become an elective office at the next general municipal election.¹⁸ It has been our experience that the voters will universally select the two-year term.

¹⁴ Cal. Gov. Code § 34900.

¹⁵ League of California Cities.

¹⁶ Cal. Gov. Code § 34903.

¹⁷ Cal. Gov. Code § 34900.

¹⁸ *Id.*

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The ballot measure needs to create a system so that two of the council seats will be for four years, and two seats for two years.

California Government Code Section 34902(a) states that "one of the offices of city councilperson, to be filled at the [next general municipal] election, shall be designated as the office of mayor, to be filled at the election." Thus, if three Council seats are up for election, only two will be open for councilmembers and the other one will be open for mayoral candidates.

At any time, if the city wishes to return to a rotational mayoral system, as El Monte attempted to in November 2009, the procedure is similar – the question is placed on the ballot. If a majority of voters vote to return to a rotational mayoral system, the directly elected mayoral system will expire upon the incumbent's term.

As a side note, a person is not eligible to hold office as mayor unless he or she is at the time of assuming that office an elector of the city and was a registered voter of the city at the time nomination papers are issued to the candidate.¹⁹

One thing that is clear is that once the voters are given the choice to go to a directly elected system, they virtually universally chose to do so. Moreover, since the system is established by the voters, it may only be dissolved by the voters. Again, in our experience this rarely occurs. Lawndale has taken the question of returning to the rotational system back to the voters and this has been rejected.

A more recent example occurred in November 2009 where there was an initiative in the City of El Monte to change from a directly elected mayor to a rotational mayoral system. The arguments for the switch were that it cost nearly \$30,000 to run for mayor every two years and that it was hard to make long-term plans for the City with all the squabbling going on internally, i.e., the politics and behind-the-scenes maneuvering due to Councilmembers running for mayor. However, it failed 67 percent to 32 percent and the City of El Monte's directly elected mayor system continues.

5. **There Are Separate Statutes Regulating Directly Elected Mayors, Including Laws Pertaining To Salary. A Directly Elected Mayor Has The Power To Nominate Individuals To Regional, As Well As Local, Boards, Commissions And Committees With The Approval Of The Council. (Mayor Must Nominate And Council Approve).**

As stated previously, the powers of a directly elected mayor are substantially the same as the appointment system. Certainly a directly elected mayor can justifiably feel in a stronger

¹⁹ *Id.* at § 34904.

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position *visa vie* the rest of the council: in an appointive system the mayor can be removed by three votes, but in a directly elected system it would take a recall by the voters.

There are differences, however. One has to do with salaries. Salaries of a city councilmember are generally dictated, by California Government Code Section 36516, which sets salary according to a city's population (and by allowing for increases by city ordinance). However, the statute relating to directly elected mayoral salaries, Section 36516.1 states:

"A mayor [directly] elected...may be provided with compensation in addition to that which he receives as a councilman. Such additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election." (Emphasis added).

So, by ordinance or at an election, a city can provide that its mayor receive extra compensation on top of the compensation received for acting as a councilmember. Further, the salary of a mayor cannot be reduced during his or her current term of office, according to the Attorney General's Office (80 Ops. Cal. Atty. Gen. 119 (1997)).

Another potential difference is that in a directly elected system, the mayor nominates appointees to all city boards, committees and commissions.

"In general law cities where the office of mayor is an elective office...the mayor, with the approval of the city council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute."²⁰

In 81 Ops. Cal. Atty. Gen. 75 (1997), the Attorney General's Office interpreted this provision to mean that except where otherwise provided by statute, i.e., in the case of the Delta Protection Commission, for example, a directly elected mayor is responsible for making all appointments to local and regional boards, commissions and committees.

However, those appointments are subject to the approval of the city council, although that approval is similar to the "advice and consent" provision of the United States Constitution" (U.S. Const., art II, § 2(2)) (81 Ops. Cal. Atty. Gen. 75). Thus, the city council cannot direct the mayor to appoint a specific person. (*Id.*)

In the City of Palm Springs which established a directly elected system, the difficulties of this system were illustrated when the Mayor had a serious disagreement with one Commissioner and refused to reappoint him. The rest of the Council would not approve the Mayor's nominees,

²⁰ Cal. Gov. Code § 40605.

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and the Mayor would not reappoint the incumbent (who went off the Commission when his term was up). The position remained vacant for six months until the Mayor relented.

6. **A Number Of Cities Have Switched From Rotational Mayoral Policies To Directly Elected Mayors With Success. Cities Can Rarely Switchback As Given The Choice, Voters Prefer Direct Election. One City, El Monte, Recently Tried Via Initiative To Switch From Directly Elected Mayor To A Rotational Mayoral System But The Initiative Failed.**

Cities which have gone to directly elected systems have operated successfully under the system for many years. Lawndale cited previously, has had its system now for over two decades, and it did resolve the rotation disputes.

There are certain advantages to a directly elected mayor. The elected mayor has the opportunity to campaign on a platform of issues and is then elected, theoretically, to accomplish those issues. A mayoral race may raise council visibility in general and get voters interested in the issues. The elected mayor has two or four years, instead of one, to work on issues, which can create a sense of stability.

The system can give the community a chance to interface closely with one visible person while making that person accountable for his or her campaign promises. A directly elected mayor can also provide consistency in getting the community involved, e.g., setting up committees to examine local problems and other long-term goals that may fall by the wayside with a mayor who only gets to serve one term.

There are also disadvantages to a system revolving around a directly elected mayor. There can be a tendency for the mayor to separate himself or herself out from the council and work less as a teammate than someone elected by his or her peers to serve a one-year term. At times, the agenda of the mayor may differ from that of the council, i.e., he or she may have been elected on certain points that the council does not agree with and will have to learn to work with the rest of the council as a group in order to accomplish these tasks or there may be animosity within the council.

Beyond these points, there is a huge drawback. It is our experience that when the voters are given the chance to select the mayor's term of office, they generally pick the two year term (and when given future opportunities to change to a 4 year term, they retain the 2 year term). This means that every time the mayor is up for election, there are two incumbent councilmembers who are not up and have a free ride to run against the mayor. As the proponents of the initiative in El Monte pointed out, it doesn't create a great deal of camaraderie among the council when they are running against one another for mayor and fighting it out on the campaign trail. This creates endless competition and strife amongst the councilmembers. In the end the

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negative dynamic which leads to the breakdown of the rotational system is shifted into an electoral format where voters are asked very two years to resolve these intra council conflicts.

As a side note, where incumbent councilmembers run, it can also create council vacancies when they win, which have to be filled by appointment – another consideration as this can also cause instability, and lead to the cost of a special election if the councilmembers can't agree on a replacement.

7. **The Rules Of The City Council Give The Mayor The Power To Appoint Councilmembers To All Positions On Committees And Commissions As Representatives Of The City On Non-City Boards And Commissions After Consultation With The City Council, But Other Policies Require Council "Approval" For "Council Committees" While Still Other Policies and Ordinances Contemplate One Appointment By Each Councilmember. These Policies Could Be Made More Uniform By The Council.**

Generally, in Banning there are three types of committees: (i) those on which only Councilmembers are appointed to, which include non-City Boards and Commissions, as well as ad hoc "Council Committees" (2x2s); (ii) those standing committees on which residents and non-residents serve, such as Economic Development; and (iii) those on which purely citizens are appointed to serve and which "serve in the conduct of the operation of the City government" (Rules of the City Council, Section IV, Paragraph 4.2), such as Planning Commission and Parks and Recreation Committee.

As a general rule, Section II (Meetings), Paragraph I (Appointments), Subsection 2.40 of the Rules of the Council states:

"Except as otherwise provided herein or by law, including the Banning Ordinance Code, all appointments to positions on committees and commissions or of Council members as representatives of the City on non-City boards and commissions, shall be made by the Mayor after consultation with the City Council."

Thus, basically, the Mayor has the power of appointment, unless it is stated otherwise in the Banning Municipal Code, the Rules of the City Council, or dictated by state law. However, he or she must "consult" with the City Council, although that is an undefined term. This would appear to include all regional boards and commissions as well as all other boards and commission not mentioned specifically elsewhere. As a side note, there are particular regional committees that requires the city's mayor to be the representative (i.e., the League of California Cities Executive Board Representative), so in those cases, the Mayor has no choice but to appoint himself or herself.

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However, there is something of a conflict in the Council rules for ad hoc "Council committees" (2x2). Section IV (Committees and Commissions), Paragraph 4.1, of the Rules of Council for the Banning City Council, states as follows: "...Except as otherwise specifically provided by law, the Mayor shall appoint the members of the Council committees, subject to the approval of the Council..." Here, it states that "Council committees" are "subject to the approval of the Council," and that phrasing is different than "after consultation with the City Council," as used in Section II. The phrasing "subject to the approval of the Council" is the same as that used in the statute pertaining to the power of appointment of a directly elected mayor, as discussed above in Section II.5. However, there is, of course, no case law interpreting the meaning of "subject to the approval of the Council" for the Rules of the City Council. Rules of statutory construction require giving meaning to words and language, and the different phrasing must be given meaning. "Subject to the approval of Council" in Section IV would seem to require, as in the case of directly elected mayors, actual approval by the Council. In effect, the Council has a veto. We interpret it to mean only those committees under (i) above where only councilmembers are members. The language in Section II, however, requiring only "consultation" must mean something different and our interpretation would be that once the Mayor hears the opinions of other councilmembers, the Mayor is free to ignore the opinions and make the appointment as the Mayor desires.

The Banning Municipal Code gives specific requirements for several different City commissions and committees, including the Planning Commission, the Economic Development Committee, the Parks and Recreation Advisory Committee, the Public Works Advisory Board, the Design Review Board, and the Disaster Council (where the Mayor is automatically chairperson and the membership is set by ordinance, although citizens can serve "at-large" at the pleasure of the City Council). Council rules for these appointments are not necessarily uniform. Further, although the ordinances set forth specific rules for appointment, on April 25 2006, the City Council voted to adopt a recommendation by then City Manager Randy Anstine pertaining to City Commissions, Committees and Boards stating that that "All appointments shall be made by the City Council." (Exhibit "C"). In addition, basically, the rules and procedures applied to the Planning Commission would be uniformly applied to all City Commissions, Committees and Boards, including the appointment process.

However, this change in procedure was not reflected in the Rules of the City Council, and the adoption of a policy would not modify an ordinance. Although, the City Clerk has informed us that the Council has informally followed the policy, no changes to the other rules were made. Section IV, Paragraph 4.2 of the Rules of City Council continues to state, that: "Membership and selection of members shall be one appointment by each member to a term to coincide with the member[']s term unless otherwise expressed by Ordinance/Resolution creating said Board. Moreover, in spite of the Council's decision to change the way appointments were made in 2006, the Banning Municipal Code Section 2.40.030(A) still states as follows: "Each appointment to the parks and recreation committee shall be by a city councilperson to a term to run concurrent with the term of the appointing councilperson. Each councilperson shall have one appointee to the committee." Thus, the ordinance coincides directly with Section IV, Paragraph 4.2 of the


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Rules of the City Council and requires that each Councilmember choose one member of the Committee. However, this appears to conflict with the Council's 2006 decision and the current way things are being done in the City.

The Planning Commission appointments (Banning Municipal Code Section 2.28.020(B)) "shall be made by the City Council." This wording is consistent with the staff recommendation in 2006 and the Council's subsequent decision. However, is the intent that "the City Council" comply with its general policy in Section II (Mayor after consultation) or the policy in Section IV (one appointment by each member, which would be appear to be inconsistent with its 2006 decision), or does neither policy apply and "City Council" means a majority of the full body?

Further, the 2006 Council decision to change all City Commissions, Committees and Boards to "All appointments shall be made by the City Council" conflicts directly with certain provisions in the Banning Municipal Code. As described above, Section 2.40.030(A), which describes the appointment process for the Parks and Recreation Advisory Committee states: "Each councilperson shall have one appointee to the committee." Accordingly, the Council may wish to amend some sections of the Municipal Code to make it consistent with the 2006 decision that "All appointments shall be made by the City Council," however that phrase is defined.

When the Council operates cooperatively by consensus these potential conflicts are insignificant. The Council recently filled the Planning Commission vacancies in a cooperative manner involving the full Council. However, in the future such discrepancies could become a problem. Of course, the Council's Rules of Procedure can be changed with majority vote. They should not conflict with an ordinance or with each other. The Council may wish to review potential conflicts in appointment procedures and establish a uniform procedure.

RESOLUTION NO. 2004-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS,
CALIFORNIA, AMENDING SECTIONS 3.05.010 AND 3.06.010 OF THE
POLICY MANUAL RELATING TO SELECTION OF THE MAYOR AND TERM
OF OFFICE**

BE IT RESOLVED by the City Council of the City of Indian Wells as follows:

SECTION 1. Sections 3.05.010 and 3.06.010 of the City Council/Redevelopment Agency Policy Manual are amended to read as follows:

3.05.010 ELECTION AND TERM OF OFFICE FOR MAYOR.

3.05.010(a) The City of Indian Wells has a council/manager form of City government. All five (5) members of the City Council are elected at large to four (4) year terms. The Mayor is selected by the Council following the normal Council elections and annually thereafter for a one (1) year term. The Mayor can be changed at any time through a majority vote of the Council. The Mayor remains as one member of the City Council and has no rights or authority different from any member of the Council.

3.05.010(b) The order of mayoral succession shall be determined by the length of the current term of incumbency, as defined by the date of election. When two (2) or more council members have equal terms of incumbency, the order shall be determined by the highest number of votes received at their election to the city council. The current rotation is as follows:

Mary T. Roche - Mayor
Percy L. Byrd - Mayor Pro-Tem
Ed Monarch
Conrad Negron, Sr.
Robert A. Bernhelmer

3.05.010(c) The outgoing mayor's name will rotate to the bottom of the previous year's mayoral succession list, with all other names moving up one position, in order that the outgoing mayor pro-tem shall become the new mayor, and the next council member on the list shall become the new mayor pro-tem.

3.050.010(d) Newly elected council members shall be added to the bottom of the mayoral succession list, following the outgoing mayor in that election year's council reorganization. When there are two (2) or more newly elected council members, the order shall be determined by the person who received the highest number of votes at the election.

3.050.010(e) Any council member appointed to fill a vacancy shall be added immediately to the bottom of the mayoral succession list. In the event the appointment is to fill a vacancy at the mayor or mayor pro-tem's position, all other names on the succession list shall move up one position.

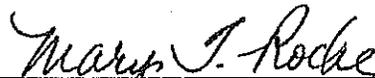
EXHIBIT "A"

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3.06.010 ELECTION AND TERM OF OFFICE FOR MAYOR PRO TEM.

The City of Indian Wells has a council/manager form of government. The Mayor Pro-Tem is elected by and serves at the pleasure of the City Council. The Mayor Pro-Tem will be appointed as the Mayor when there is a vacancy in the office of Mayor. All five members of the City Council are elected at-large to four (4) year terms. The Mayor Pro-Tem is selected by the Council following the normal Council elections and annually thereafter for a one (1) year term. The selection of the Mayor Pro-Tem will follow the rotation policy stated in Section 3.05.010. The Mayor Pro-Tem can be changed at any time through a majority vote of the Council.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Indian Wells, California, at a regular meeting held on this 15th day of April 2004.



**MARY T. ROCHE
MAYOR**

CERTIFICATION FOR RESOLUTION NO. 2004-16

I, Linda Furbee, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that the whole number of the members of the City Council is five (5); that the above and foregoing Resolution was duly and regularly passed and adopted at a regular meeting of the City Council of the City of Indian Wells on the 15th day of April 2004, by the following vote:

AYES: Bernheimer, Byrd, Monarch, Negrón, Roche
NOES: None

ATTEST:

APPROVED AS TO FORM:



**LINDA FURBEE
CITY CLERK**



**STEPHEN P. DEITSCH
CITY ATTORNEY**



RESOLUTION NO. 01-110
OF THE CITY OF PALM DESERT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT,
CALIFORNIA, SETTING FORTH A POLICY ON THE OFFICE OF MAYOR
AND THE OFFICE OF MAYOR PRO-TEMPORE

WHEREAS, the City Council of the City of Palm Desert, California, must appoint from its own members two Council members to serve as Mayor and Mayor Pro-Tempore; and

WHEREAS, it has been the desire of each City Council serving the City of Palm Desert since incorporation to make these positions honorary in nature, held for a one-year period of time; and

WHEREAS, it is this City Council's opinion that each member elected to the Council is equally qualified and deserving to hold these offices, and each Council member should be given ample opportunity to serve in one or both of these offices.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Palm Desert, California, that the appointments of Mayor and Mayor Pro-Tempore shall be made on an annual rotating basis, and no one Council member shall serve a term in either office to exceed a one-year period of time. The selection shall be made and the term commence at the first regular council meeting in December.

BE IT FURTHER RESOLVED, prior to any member of the Council being appointed as Mayor such Council member shall have been a member of the Council for approximately two years and the Mayor Pro-Tempore shall have been a member of the Council for at least one year prior to being selected for those respective offices.

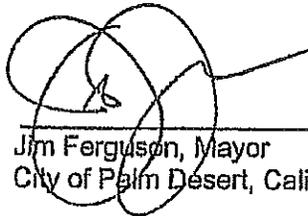
PASSED, APPROVED AND ADOPTED by the City Council of the City of Palm Desert, California, at its regular meeting held on the 11th day of October, 2001, by the following vote, to wit:

AYES: BENSON, CRITES, KELLY, SPIEGEL, FERGUSON

NOES: NONE

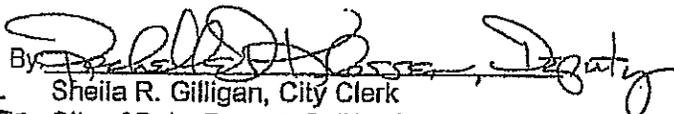
ABSENT: NONE

ABSTAIN: NONE



Jim Ferguson, Mayor
City of Palm Desert, California

ATTEST:



for Sheila R. Gilligan, Deputy
Sheila R. Gilligan, City Clerk
City of Palm Desert, California

APPROVED AS TO FORM:



By: David J. Erwin
David J. Erwin, City Attorney
City of Palm Desert, California



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Excerpt of the Minutes of April 25, 2006

REPORTS OF OFFICERS

1. Analysis of City Commissions/Committees/Boards.
(Staff Report – Randy Anstine, City Manager)

City Manager said that with the recent reorganizations that have taken place within the City administration the Council directed him to go back and do an analysis and a review of the existing commissions and committees that are under the auspices of the City. Banning like virtually every city in American has a number of citizen commission and committees organized in a variety of ways and performing a variety of functions. Council has asked the staff to explore the current status of how the commissions, the committee and the boards were established and assigned to the various departments of the City. Historically, each member of the City Council has been allowed to nominate one member whose appointment is subject to ratification by the City Council. After consultation with the various department directors, this report is attempting to outline some suggested changes related to the manner of appointment and assignments of members to boards and committees. He has listed and detailed the legal authority that covers each one of these committees or commissions. The ones that he had studied were the Planning Commission, Parks and Recreation Committee, Ruth Hooker Committee, Transit ADA Advisory Committee, Pass Area Transit Task Force, Skatepark Task Force, Public Works Advisory Committee, Water Utility Advisory Committee and the Economic Development Committee. Based upon that analysis and consultation with the various departments he has come up with a series of recommendations. On October 25, 2005, the City Council adopted Ordinance No. 1332, which amended Banning Municipal Code Sections 2-5 through 2-9. This Ordinance set forth the manner in which Planning Commissioners are appointed. It details the Membership Requirements, Term and Vacancies, Compensation, Rules of Procedure and Responsibilities. City Manager went over those recommendations.

Councilmember Welch said maybe it says itself by omission but there is no where in here regarding terms and vacancies that suggest incumbents. Once you serve your four years can you reapply, should not reapply, and are there term limits. There is nothing in here that gives guidance. Is it included by its absence?

City Attorney Biggs said if there is no prohibition against continuing or being reappointed, then it is just left alone.

Mayor Machisic asked does that mean now that every commission and committee only has five members. City Manager said if Council so chooses. Is that a given to the Council.

Mayor Pro Tem Hanna said no, not to her. In particular, the Public Utility Advisory Committee that is being recommended she doesn't think needs to be maintained at five. That is a very diverse subject. She said it says the primary function is to review and recommend utility rates as well as review of special projects. She would assume that that

going to be organizing a youth forum at Nicolet for 7 and 8th graders and she will be doing a focus with the group this Friday for them to determine what the theme is or the issue that would most compelling to 7th and 8th graders and as soon as she knows the date on that she will pass it along. She is not sure sitting in on City meetings is going to be that interesting to youth.

Councilmember Salas said first of all we don't know unless we try. Secondly, maybe we offer it in some of their bulletins and let them apply so if they have the interest, they can apply. We shouldn't mandate that there must be student participation in that meeting. Maybe even focus on the high school juniors and seniors who might potentially look into some of those fields.

Mayor Pro Tem Hanna said that if this was passed she would encourage the Mayor to direct some planning to allow the possibility of this being successful.

Mayor Machisic said he would like to offer an idea. We develop this youth council which would be young people and then why don't we at that point offer them the opportunity to serve on these other committees. If they have the interest for it, they will do it themselves. If they have the interest for a particular committee for instance the Park and Recreation Committee, they might go. We will see if there is any interest. Rather than trying to appoint someone to all the committees let the youth council get together and present them with the problem and see what the solution is.

Mayor Pro Tem Hanna said her suggestion is that the Mayor might appoint some small committee to work on this and develop a plan on how this will be realized.

Motion Hanna/Salas to approve the recommendation as presented by staff with the changes.

Mayor Machisic opened the item for public comments.

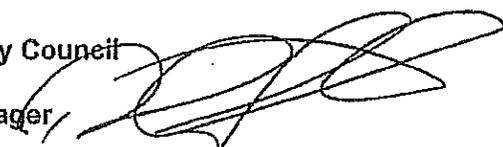
Bob Botts, 5410 Pinehurst and Chairman of the Economic Development Committee addressed the Council saying that he thinks what he has heard the Council say was 5 to 7 members on a committee. He thinks that five would limit the Economic Development Committee with two of the members being Councilmembers it would limit them to three public members. The other clarifications are to make it a standard four-year term and he thinks that is clear but the other was to have all of the Council voting for appointees and not from individual Council and he thinks that is what he heard.

Larry Rand, 694 N. 20th said it is a great idea to standardize this.

Motion carried, all in favor with Councilmember Palmer absent.


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**CITY COUNCIL AGENDA
REPORT OF OFFICERS**

Date: April 25, 2006
TO: Honorable Mayor and City Council
FROM: Randy Anstine, City Manager 
SUBJECT: Analysis of City Commissions/Committees/Boards

OBJECTIVE

The purpose of this report is to propose changes to the City's Commissions, Boards and Committees in order to comply with Banning Ordinance 1332.

RECOMMENDED ACTION

It is respectfully recommended that the City Council after hearing a presentation from staff provide direction to staff concerning appointments to and function of City Commissions, Boards, and Committees.

BACKGROUND

Banning, like virtually every city in America, has a number of citizen commissions and committees, organized in a variety of ways and performing a variety of functions. Council has asked staff to explore the current status and how Commission/Committee/Boards are established and assigned to the various departments of the City.

Historically, each member of the City Council has been allowed to nominate one member whose appointment is subject to ratification by the City Council. After consultation with the various City departmental directors, this report will attempt to outline some suggested changes related to the manner of appointment and assignments of members to boards and committees.

LEGAL AUTHORITY

Presently the legal authority governing the appointment of City Commissions and Committees is governed by:

- Banning Municipal Code Section 1-10 – Residence Requirements For Members of Commissions
- Banning Municipal Code Section 2-5 through 2-9 – Planning Commission
- Banning Municipal Code Section 2-51 - 2-54

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CURRENT LIST OF COMMISSION, COMMITTEES AND BOARDS

At present the following Commission, Committees and Boards exist:

- Planning Commission
- Parks and Recreation Committee
- Ruth Hooker Committee
- Transit ADA Advisory Committee
- Pass Area Transit Task Force
- Skatepark Task Force
- Public Works Advisory Committee
- Water Utility Advisory Committee
- Economic Development Committee

RESPONSIBILITIES

Planning Commission (Legal Authority – Government Code Section 65100, 65101 and 65102; Banning Municipal Code Section 2-5 through 2-9): This Commission shall exercise those functions of the planning agency of the City delegated to it in the Banning Municipal Code. The Commission prepares, reviews, adopts and recommends to the City Council for its adoption, a long range, comprehensive General Plan to guide the future physical development and conservation of the City and its adjoining environs based on geographic, social, economic and political characteristics of the community. Commission prepares, reviews, adopts and recommends to the City Council for its adoption special area specific plans for identifiable areas wherein more detailed guidelines are needed to supplement the objectives of the General Plan. Commission reviews development applications submitted to the City for consistency with adopted plans and ordinances. Approves or denies applications when final authority is granted to the Planning Commission. Makes a recommendation on those actions for which the City Council is the final reviewing approval authority. Commission acts as the appeal body on decisions made by the Community Development Director. Commission performs such other functions and duties as the City Council may from time to time direct and/or provide within the Banning Municipal Code.

Parks and Recreation Advisory Committee (Legal Authority – Banning Municipal Code Section 15-1 through 15-3): The City Park and Recreation Advisory Committee serves as an advisory Committee 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.

Ruth Hooker Committee (Legal Authority – Banning City Council): This Committee was created by a majority of the City Council several years ago. Its purpose is to oversee the use of a \$60,000.00 bequest to the Banning Senior Center (made by Ruth M. Hooker). The bequest was given with the intent that it

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be used to provide meals for the elderly of Banning. The Committee meets on an "as needed basis" and has not met in many years.

Transit ADA Advisory Committee (Legal Authority – Federal Mandate): This Committee was formed by staff and meets quarterly. The Committee is required for the City's transit system to be in compliance with the Federal Americans With Disabilities Act (ADA) of 1990. The Committee reviews dial-a-ride statistics, advises transit staff on accessibility issues, and serves as the appeal board for the ADA complementary paratransit certification process.

Pass Area Transit Task Force (Legal Authority – Banning City Council): This Task Force was created by a majority vote of the City Council. The Task Force was formed to review the work of a consultant hired to conduct a transit needs assessment of the Pass Area and to develop a transit plan that addresses identified needs. The Task Force is made up of one City Council member from Banning, Beaumont, and Calimesa, a representative from the County Supervisors Office, representative from the Morongo Band of Mission Indians, Banning Community Services Director, Beaumont Transit Manager, RTA staff, SunLine staff and RCTC staff. This group meets on an "as needed basis".

When the study was completed, the Task Force chose to continue to meet to advise staff on the implementation of the Pass Area Transit Plan and serve as a forum to discuss regional transit issues. The current membership was expanded to include a representative from the Riverside County Employment Development Division office in Banning.

The Task Force meets on an "as-needed basis", which turns out to be about once every two to three months. The Task Force has shown itself to be a valuable link between the different agencies represented.

Skatepark Task Force (Legal Authority – Banning City Council): This Task Force was created by a majority vote of the City Council. The Task Force was formed to assess the feasibility of building a skatepark in Banning. This purpose quickly shifted to finding the funds to build the facility. The Task Force membership is made up of two City Council members, the City Manager, Community Services Director, a representative of the Banning Police Department, a Parks and Recreation Committee member, two community members at-large, and seven skateboarders. There are no established guidelines for the Task Force. This Task Force is essentially dead. Several of the members have resigned from the Task Force. A letter was sent to the members asking them if they wanted to recommit to the effort. No one responded. The last meeting of the Task Force was held in December 2001.

Public Works Advisory Committee (Legal Authority – Banning Municipal Code Section 2-51): This Committee was formed in May 1996. The primary function of the committee is to review the public Works programs, utility rates &

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other related functions. This committee meets on regular basis as set forth in the Ordinance. Per Ordinance the Committee is scheduled to meet quarterly, but historically, the Committee has met monthly. This Committee was mainly formed to advise the City Council utility rates, cable television franchise agreement and act as the airport committee.

Water Utility Advisory Committee (Legal Authority – Banning City Council): The Water Utility Advisory Committee was created in August, 2002 by City Council action. It appears the intent of the City Council was to have this Committee work as an adhoc Committee and meet on an "as needed basis" with no termination date set. The Committee has 9 members including two former Council members, a Planning Commissioner, a Public Works Advisory Committee member & four members from Community at large. There are no specific guidelines for this Committee. The Committee has not met for at least last 10 months. Water Superintendent has coordinated the meetings for this group. There is definitely some overlap between these this committee and the Public Works Advisory Committee.

Economic Development Committee (Legal Authority – Banning Municipal Code Section 2-94): The Economic Development Committee was established for the purpose of participating in the implementation of the City's economic strategic plan/implementation plan as approved by the City Council. The Committee is to advise the City Council on the economic impacts of proposed development within the City. The Committee reviews and advises the City Council on proposed economic development project within the City, as well as advising the City Council on economic development trends and/or program that may impact the City fiscally or economically.

STAFF RECOMMENDATION(S)

On October 25, 2005, the City Council adopted Ordinance No. 1332, which amended the Banning Municipal Code Sections 2-5 through 2-9. This Ordinance set forth the manner in which Planning Commissioners are appointed. It details the Membership Requirements, Term and Vacancies, Compensation, Rules of Procedure, Duties and Responsibilities.

Recommendation 1: Staff would respectfully recommend that for the sake of uniformity and continuity, Council utilize the requirements imposed on the Planning Commission for all City commissions, committees and boards. Specifically:

- All members shall be residents of the City of Banning who hold no other municipal office in the City.
- Members may not be employees of the City of Banning.
- Members shall serve four (4) year terms which shall be staggered every two years concurrent with the City elections.
- All appointments shall be made by the City Council.

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- Members shall serve at the pleasure of the Council and may be removed at any time by a majority vote of the entire Council.
- Any member who is unexcused for two consecutive regular meetings or six meetings within a 12 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 the resigned Members place for the remainder of their term.
- To be excused from any such meeting, a Member shall notify the appropriate City Department 48 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 shall constitute an excused absence.
- Members shall not receive compensation; reasonable traveling expenses to and from conferences and/or special field trips and training sessions shall be reimbursed.
- Members shall adopt rules for the transaction of business and shall keep a record of its transactions, findings, and determinations. The Brown Act and "Robert's Rules In Plain English" by Doris P. Zimmerman (Harper Perennial) shall be incorporated into such rules.
- Members shall follow all applicable City fiscal and administrative policies and procedures.

Recommendation 2: Following consultation with the Director of Community Services it is respectfully recommended that the Ruth Hooker Committee, and the Skatepark Task Force be disbanded. They have served their specific purpose and are no longer necessary.

Recommendation 3: Following consultation with the Directors of Public Works, Electric Utility and Public Utility it is respectfully recommended that the Water Utility Advisory Committee be Disbanded. With the recent reorganization of the Public Works Department it is felt that the Committee would better serve the City if it was merged with the Public Works Advisory committee and renamed the Public Utility Advisory Committee. The primary function of the new Committee would be to review and recommend the Utility rates of City owned utilities as well as review of special projects as deemed necessary by the City Council.

Recommendation 4: Councilmembers have expressed an interest in having the Banning youth actively participate in the government process. Staff would recommend that Council give consideration to creating and appointing a Youth member to each of the various committees.

Strategic Plan Integration

N/A

Budget/Cost Impact

N/A

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