



# City of Banning

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May 19, 2010

## VIA MESSENGER

Thomas Cahraman, Presiding Judge  
Riverside Superior Court - Grand Jury  
Post Office Box 829  
Riverside, CA 92502

Re: Response to 2009-2010 Grand Jury Report to the Community Redevelopment Agency of the City of Banning Dated February 23, 2010

Dear Mr. Cahraman:

Attached please find the Banning Redevelopment Agency's response ("Banning Response") to the Grand Jury's report dated February 23, 2010 ("Report"). The Response was presented publicly at the Agency's regular meeting of May 11, 2010, and was approved by the Agency for submission to the Grand Jury as the Agency's formal response. The vote to approve the document was 4-1 with Board Member Franklin disagreeing with the proposed responses to the Grand Jury's recommendations #s 7 and 9.

Recommendations 7 and 9 were, in sum, that the Agency Board seek a return of \$162,000 from the Cultural Alliance and that the Board "cease and desist" awarding any further funding to the Cultural Alliance. The Banning Response does not concur with the Grand Jury's recommendations on these points. Although Board Member Franklin disagreed with the proposed response on these points, in essence agreeing with the Grand Jury's recommendations, she agreed with the other Agency Board Members on the remainder of the proposed response.

The draft response was prepared by Agency redevelopment staff, the Executive Director, and the City Attorney's office of Aleshire and Wynder, LLP. It was prepared based on past Agency actions and dialogue and tried to project how we thought the Board as a whole would respond. The draft response was then presented at a public meeting, and public testimony was received, before the Agency Board finalized the document for submission to the Grand Jury through this office as the Agency's Response.

The Response discusses each of the Grand Jury's findings and recommendations, and based on the additional material developed by Agency staff, the Banning Response does not concur with all of the Grand Jury's recommendations, and explains the reasons for any disagreements. The materials we have relied upon for this response are attached to the Response and we believe present a somewhat different context for viewing the Agency's programs than was enjoyed by the Grand Jury.

May 19, 2010

We very much appreciate the Grand Jury system, and in particular your interest into our programs and activities over the last several years. Undoubtedly your Report has caused us to look carefully at our programs and your recommendations, and created some dialogue on where we are going--both internally and with the community. Our Response details the significant budgetary issues facing Banning, and the state in general, and to some extent this has constrained us from doing something's we would like to do. Nevertheless, we believe that our redevelopment funds have been expended prudently throughout our community, and in particular, the investment in Downtown Banning has helped to bring a sense of excitement and anticipation about the future of Downtown Banning. This has helped to secure the commitment of \$60M from the State to build a Mid-County Justice Center in Downtown Banning, and to get an agreement with a developer to redevelop the San Gorgonio Inn property and environs--and this success in the worst recession since the Great Depression stand in marked contrast to most communities in the State. We also view the Cultural Alliance as an important partner in this effort, for the reasons set forth in the Response.

So we hope you will carefully look at the materials we have prepared and consider our perspective. We would be happy to have staff or some or all Board members to meet with you if you would like to further discuss our programs, or the Response.

If you have any questions or concern, please do not hesitate to call me at (951) 922-3104.

Sincerely,



Andrew J. Takata  
City Manager

Attachment

cc: City of Banning Community Redevelopment Agency Board  
David Alshire, City Attorney, Alshire and Wynder, LLP

**FINAL RESPONSE TO 2009-2010 GRAND JURY REPORT  
CONCERNING THE COMMUNITY REDEVELOPMENT AGENCY OF THE  
CITY OF BANNING APPROVED BY THE BANNING  
REDEVELOPMENT AGENCY BOARD ON MAY 11, 2010**

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**LIST OF ATTACHMENTS:**

- Attachment #1:** Agency Report, August 25, 2009 “Bond Funded Projects Update”
- Attachment #2:** Agency Staff Report-Work Session September 8, 2009, “CRA 2007 Bond Funded Project List - Work Session”
- Attachment #3:** Current Bond Funded Projects List
- Attachment #4:** Historic Employee/Staffing Table
- Attachment #5:** Agency Staff Report – February 13, 2007, “Proposed Clarifications and Changes to the Commercial Façade Improvement Program”
- Attachment #6:** Map - Agency Façade Program Priority Zones
- Attachment #7:** Agency Staff Report – May 29, 2007, “Review of Applications for Commercial Façade Improvement Grants”
- Attachment #8:** Map - Agency Façade Program Projects
- Attachment #9:** Map - “East” Banning Community Redevelopment Agency Projects
- Attachment #10:** Map - Residential Rehabilitation Projects
- Attachment #11:** Map – First Time Homeowners Projects
- Attachment #12:** Agency Staff Report, July 28, 2009, “Approval of CRA Resolution 2009-18, Assignment Agreement to Acquire and Purchase Real Property located at 2301 East Ramsey Street Banning, CA (APN#538-162-016-6).”
- Attachment #13:** Current Contract with Banning Cultural Alliance
- Attachment #14:** Supplemental Addendum to Exhibit D – Cultural Alliance Contract

## INTRODUCTION

The Banning Redevelopment Agency ("Agency") became aware during the summer of 2009 that the Riverside County Grand Jury ("Grand Jury") was conducting a review of programs and procedures of the Agency when the Grand jury sought various documents from the Agency and sought to interview various public officials. On February 23, 2010, a written report on the findings and recommendations (the "Report") was delivered to the Agency, with the Agency given 90 days to respond.

The Agency appreciates the time and effort taken by the Grand Jury to review the Agency's programs and procedures. In a number of instances the Grand Jury has made useful suggestions which the Agency will implement. In other respects, it appears that the Grand Jury may have not had the most current information, and the Agency was already in the process of making or had made various reforms. Finally, there are other issues on which the Agency may have different policies, goals and objectives from those understood by the Grand Jury. We hope by explaining our policies and the reasons therefore, that the Grand Jury will agree that the Agency is acting in the best interests of its citizens.

The Grand Jury Report is presented in two sections, one dealing with "Findings" and the other a set of stated "Recommendations." This response will be organized in a similar fashion. To understand our response in the "Recommendations," there must be a common understanding of the facts or "Findings"

### **A. FINDINGS**

1. **2007 \$24 Million Dollar Bond Issue To Fund Projects.** *"...Little Specificity Was Included In The Official Statement. Investigation Revealed That The Redevelopment Agency Board Had Not Formulated Detailed, Prioritized Plans For Use Of The Proceeds."*

The Bond Offering Statement for the \$24M Bond Issue in 2007 indentified three areas for the expenditure of the bond proceeds, and allocated funds in equal portions: (i) Revitalization of downtown, (ii) Economic incentives for development of private industrial or commercial projects to generate jobs and tax revenues, and (iii) Public improvements needed to improve public health and safety, make private development more feasible, and alleviate blight. Potential projects were indentified under each of these areas. Specifically, the Offering Statement provided:

*"The Bonds are being issued to provide funds for redevelopment activities of the Agency, to fund a reserve fund for the Bonds and pay the expenses of the Agency in connection with the issuance of the Bonds, including a bond insurance premium.... The Agency anticipates expending the proceeds of the Bonds on the following projects, but may substitute other projects.*

***\$7-\$8 Million for the Revitalization of the Downtown***

- *New streetscape*
- *New commercial facades*
- *Purchase of vacant parcels for additional off-street parking*
- *Development of art park*
- *Restoration of the Fox Theater*
- *Paving of alleyways for pedestrian passage*
- *Forgivable loans for specialty retail shops/restaurants tenant improvements and signage*

***\$7-\$8 Million for Economic Incentives***

- *Assembly of land for Drag City and associated industrial*
- *Assembly of land for additional hotel/restaurant development at Highland Springs interchange with the I-10 freeway*
- *Construction of off-site improvements for developments generating new jobs and/or sales tax*

***\$7-\$8 Million for Public Improvements***

- *Extension of roadways and utilities to large vacant industrial tracts*
- *Beautification of major corridors through the project area – Ramsey Street gateways and I-10 interchanges*
- *Traffic signalization along Lincoln Street for future industrial development*
- *Improvements to park and recreation facilities in the project area*
- *Completion of curb and gutter along the length of Ramsey Street and in residential neighborhoods*
- *Creation of railroad quiet zones in the project area”*

There are significant variations in the level of detail concerning the projects outlined in the Offering Statement. For example, “restoration of the Fox Theater” is a specific project, while “new streetscape” is vague as to the location or nature of the improvements. Specific dollar amounts and budgets were not available for any of these projects. In fact, in the case of the Fox Theater, the original budget estimate of this project turned out to be only half what was required after an architect was able to go through the building and develop a detailed budget. Developing precise lists of streetscape or façade improvements is impractical for purposes of preparing a public financing as significant expense would be incurred in developing improvement plans, and this cannot be done until the bond funds are available to pay for the plans. Without the plans, detailed cost estimates are not available. So there is a “chicken-egg” problem. In fact, the level of detail provided in the Offering Statement was adequate for the bond issue as required by the finance team, and was typical of such bond issues.

Following the receipt of Bond finance revenue in 2007, the Agency prepared a detailed project list that included funded, pending and potential projects for implementation and planning purposes.

As the Agency proceeded with these projects, many things changed. For example, as designs progressed, the scope of many projects changed. In addition, construction costs began to change significantly during the period from 2008-2010. Also, new and different projects were brought forward, and the Agency tried to be responsive to priorities generated by the community.

The Agency's annual budget reviews were another occasion to examine funding priorities. Finally, State budget raids forced reprioritization of projects as Agency funds were reduced from anticipated levels.

Staff has wanted to make sure that the expenditure of monies reflected the most current needs of the community. Beginning on August 2, 2008, the Agency Board began a series of review sessions (August 2, 2008, August 11, 2008 and August 11, 2008) which provided the Agency Board the opportunity to discuss and update the prioritization, add or delete bond funded projects. These discussions culminated in the August 25, 2009 Regular Meeting of the Community Redevelopment Agency, where staff presented an update (**Attachment 1**) on the status of the projects completed, underway, planned and proposed with the proceeds from the 2007 Bond issuance. Due to extensive interest by the Board in discussing the project list and interest in updating and prioritizing projects, the matter was further continued to a Work Session on September 8, 2009.

On September 8, 2009, the CRA Board conducted a public Work Session wherein they reviewed the status of the 2007 project list (updated) to discuss completed projects, progress on current projects, and whether to reaffirm or remove proposed or pending projects and potentially add new projects to the list (**Attachment 2**). The result of the Work Session and review is shown in **Attachment 3: Approved Bond Fund Project List, September 8, 2009** which prioritizes Agency bond-funded activities and projects going forward in 2010 and beyond. The current project list, is being further reviewed in the current Agency budget process, possibly at the next Agency meeting. All these reviews have occurred at public hearings.

What can be seen from this review is that the Offering Statement list of almost 20 projects has been evolved by the Agency into a projects list of some 35 projects either completed or planned, with all of this occurring before our becoming aware of the Grand Jury's finding.

2. **Employee Turnover.** *"Testimony Revealed That The City's And The Redevelopment Agency's Planning And Project Implementation Have Been Hampered By Key Employee Turnover...."*

Attached as **Attachment 4** is a table showing general staff turnover in Banning positions of personnel having involvement in the redevelopment program area. The Grand Jury is correct that there has been significant turnover. There is no doubt that such turnover can adversely affect program continuity, and it creates the need to train new personnel, and establish bonds among staff members and between staff and the community. The Agency agrees that such instability is not desirable.

On the other hand, some of this is a reflection of the huge economic issues affecting the general state economy and local government in particular. In FY 2009-2010 the City faced a \$5M budget deficient and eliminated 40 positions. Current projections are for another \$1.2M shortfall for the coming fiscal year – which represents a 35% cut over two years. In such economic times, employee stability is difficult to maintain.

As part of these budget issues, in 2008 City Manager Brian Nakamura recommended deleting the position of Redevelopment Director and merging offices of Planning Director and Redevelopment Director into a single position, as a cost savings.

The implementation of this recommendation has led to the need for increased reliance on consultant services, and for use of the resources of Agency Counsel. As noted by the Grand Jury, the 5-year Implementation Plan expressly acknowledged that hiring outside consultants was one means of meeting the Agency's needs. For example, the Agency utilizes Diane Wirth, of Solution Works to promote various projects with the development community, including retail development, recruitment of retailers and other marketing, analysis and economic development activities. Even this contract has been reduced to \$80,000 for FY 09-10 from \$160,000 in FY 07-08 for economic development services, due to financial limitations and non-existent new retail and office development projects in Banning and the region. Also, Steve Dukett of Urban Futures Inc., has been retained to assist and advise the Agency on specific projects such as the redevelopment of the former San Gorgonio Inn Site, renovation of Stagecoach Plaza, re-use of the former All Star Dodge site, Agency budgeting and bond fund accounting and review of other redevelopment proposals and projects.

With the use of these contract resources, the current staffing structure includes overall supervision by the Executive Director, Andy Takata, Department Management by the Community Development Director, Zai Abu Bakar and her staff, Redevelopment Manager, John Jansons, and Project Coordinator, Dirk Voss who was recently hired as of February 24, 2010 to fill this position which had been vacant since October 2007. Danicle Savard also serves as the Secretary to Executive Director Takata. This latest hire of Dirk Voss was subsequent to the Grand Jury's Report, but the recruitment for this position began in October of 2009.

Accordingly, all budgeted positions are filled and with the contract help, the Agency is appropriately staffed to fulfill its mission. While the Council is struggling to avoid laying-off police officers and cutting funding for firefighters, the Redevelopment function has appropriate resources, and realistically must carry forward its program within these budget constraints.

3. **Facade Program.** *"It Was Found That The Redevelopment Agency Board Has Committed Funds For Improving The Appearance Of Vacant, Unrented Property While Ongoing Businesses Are Made To Wait For Assistance."*

The following section will show that the Agency has been deliberate in its adherence to program guidelines in awarding Façade Improvement grants to downtown property owners. In subsection (a) below, the pre-2009 policy for selecting projects demonstrates that projects were primarily selected based upon location in order to promote "downtown and core area" revitalization. In subsection (d) below, under the Façade Program since 2007, only two out of fourteen projects were completed on vacant buildings, the other twelve were for owner-occupied businesses, and owner-occupied businesses serving as the anchor with additional lease space, or for multi-tenant buildings. As for the two vacant buildings that were improved with the Façade program, the sense at the time was that if these long vacant buildings were improved physically and aesthetically, the chances of leasing these properties might improve. This strategy preceded the overall decline in the economy that has since stifled small business openings.

Finally the Agency was thoughtful in denying projects that did not conform to Agency guidelines in place or were considered not the highest priority for an investment of competitive Agency resources at the time.

(a) **Pre 2009 Selection Criteria in Awarding Façade Projects**

On February 13, 2007, the Agency enacted new policies that created Priority Zones for consideration of Façade Program Awards as follows **(See Attachments 5 and 6)**:

- Priority 1 – Downtown Core with borders of 4<sup>th</sup> St (W) to Martin (E) And Livingston (S) to Williams (N)
- Priority 2 - Add out to 8<sup>th</sup> St (W) to Hargrave (E)
- Priority 3 - Add the Remainder of Ramsey St (East and West)

Additionally, eligible buildings must:

- Have no outstanding code violations,
- Be a Conforming Use per Zoning Code

Agency action in approving and denying façade applications/projects has been consistent and supports the Board policy to improve key commercial buildings in the Project area.

Since 2007, there has been consistency in focusing the facade improvement program on commercial buildings in the downtown core area whose renovation would have significant effect in beautifying downtown and improving the economic viability of existing buildings and improving the leasing prospects for high visibility, prominently located vacant buildings. However, no distinction was made between occupied or unoccupied buildings, and no special priority was given to improving the vacant properties in an effort to get them occupied. Instead, all property owners were given equal opportunity to apply to the program.

(b) **Current Selection of Projects**

Consideration of current project selection includes a variety of criteria including: quality of design and renovations proposed, budget, owner contribution (if applicable) location, visibility, prominence, opportunity to increase off-street customer parking, completion of block faces, and enhanced business retention, expansion or recruitment as a result of the improvements. Though arguably the criteria of “enhancing business retention” would favor assisting occupied property, the Agency was also interested in attracting new business to the vacant properties. Overall the Agency does not have a policy of either favoring or disfavoring occupied or unoccupied property.

The decision(s) of which project to recommend for selection/funding by the Board is now made by a “Façade Review Committee” comprised of representatives of each City Department involved in the development process including: Planning, Redevelopment, Economic Development , Building and Safety, Public Works and the Electric Utility.

This “team” approach has led to better coordination, communication, identification of obstacles and issues and has fostered improved collaboration and team building between departments and divisions within the City.



(c) **Façade Denials**

In reviewing actions on project applications, Agency records show on May 29, 2007 **(Staff Report Attached- Attachment # 7)** seven projects were recommended for denial. After the name of the project, the reason for denial follows.

<b><u>Name of Project and Address</u></b>	<b><u>Reason for Denial</u></b>
1) Desert Palms Cleaners 1529 W Ramsey	Not in Downtown/Priority Zone 1 No bids for cost
2) Beaumont Lawnmower 5731 W Ramsey	Not in Downtown/Priority Zone 1 No bids for cost
3) Banning Driveline 1540 E Ramsey	Not in Downtown/Priority Zone 1 Cost estimate and design incomplete
4) Banning Recycling Center 1233 E Ramsey	Property has current code violations and does not conform to current zoning
5) Stage Coach Manor and Barbershop 3705 W Ramsey	Not in Downtown/Priority Zone 1
6) Golden Meadows Assisted Living Facility 3863 W Ramsey	Request is for fencing only, Not in Downtown/Priority Zone 1 Not a commercial property Current non- conforming at its location
7) Premium Insurance 1072 W Ramsey	Not in Downtown/Priority Zone 1 Possible code enforcement issues

**Additional Agency records show that seven earlier projects were also denied. These include:**

1) Blue Sky 128 Third Street	Less than half of the building issued for Commercial purposes and the business that occupies space in the building is not licensed by the City.
2) Faith Builders Family Church First Street	Non-commercial use building – religious facility.
3) Ann Thompson 385 W Ramsey	Incomplete Application, Request is for repairs and deferred maintenance, it's a residential property used for storage, and applicant previously participated in Agency funded program and did not maintain the property.

- |  |   |
|--|---|
| 4) West Coast Electric<br>50 S Alessandro    | Existing non-conforming-use wherein the scope of work (roof, HVAC, parking lot) does not conform with building renovation/beautification. |
| 5) Ray's RV<br>4500 W Ramsey                 | Request for wrought-iron fencing to replace chain link only.  |
| 6) First Baptist Church<br>565 N San Geronio | Not located on Ramsey street and not a commercial building.   |
| 7) Musix Saw and Auto Xpress<br>255 E Ramsey | Non Conforming use for downtown under current zoning code.  |

In 2009, the Agency had to turn away several individuals seeking Façade Program participation and funding because the subject properties were not located within the Program boundary. These include:

- 1) Dr John Choe, DDS  
617 W Ramsey
- 2) 22<sup>nd</sup> Street Liquors  
2185 W Ramsey
- 3) Stagecoach Plaza  
NW Corner of Sunset and W Ramsey

**(d) Improvement of Occupied vs. Vacant Buildings with Façade Program**

Of the following projects completed under the Façade Program since 2007, only two out of fourteen projects were completed on vacant buildings, the other twelve were for owner-occupied businesses, an owner-occupied business as anchor with additional lease space or multi-tenant buildings **(See Attachment 8 –Façade Map)**.

<b>Project:</b>	<b>Status</b>
1) American Legion	Occupied
2) Banning Women's Club	Occupied
3) Chamber of Commerce Bldg.	Occupied / Multi Tenant
4) Cheers Marker/ Banning Donut	Occupied / Multi Tenant
5) Coplin House	Owner and Tenant Occupied
6) Elegant Affair	Owner-Occupied Business
7) Fisherman's Grill	Occupied Business
8) Hair Pro's	Owner-Occupied Business
9) Jackson, Demario Bldg.	Vacant, 1 Suite leased in 2009
10) Keeling Realty	Owner-Occupied Business
11) McCellan and Wilson	Owner-Occupied
12) Ramsey Burger	Occupied Multi-Tenant
13) Stephenson Bldg.	Vacant
14) Super Subs	Owner-Occupied

Currently, the Agency has approved three projects for facade improvement in FY 2009/2010. Of these three, two are occupied by businesses and one is currently vacant. In regards to the vacant building approved for improvement, Agency staff had begun discussions with the owners and the owners had prepared an application while the building was still occupied by a business that eventually closed in 2009, facade improvement of the scope and scale planned, is expected to enhance the ability to re-lease the building by the owner to a small business thus increasing the economic vitality of Downtown Banning.

Under the updated approval process that took effect in March of 2009, the Façade Review Committee comprised of City departments representatives, can consider occupancy as a factor in recommending award of particular projects, as well as considering that Façade Program assistance may result in better opportunities for leasing of vacant building in the downtown.

Based on the above data, in contrast to the Grand Jury's suggestion that Façade Program assistance is misdirected to vacant downtown properties, the overwhelming number of cases have in fact been occupied properties (12 of 14). There are arguments in favor of both types of properties on the basis of business retention for occupied property and business expansion (to non-occupied property). The program provides assistance in both cases, and does not routinely favor one property over another, instead taking applications as they come through the door.

4. **East Banning.** *"Onsite Visits And Sworn Testimony Revealed East Banning To Be A Blighted Area In Need Of Priority Attention From The Redevelopment Agency. Aside From Some Low-Income Housing Expenditures The Redevelopment Agency Has Neglected This Blighted Area Of The City."*

East Banning is generally described as those portions of the City east of San Geronio Avenue as reflected in the City's geographic directional street naming system. Any area east of San Geronio Avenue is considered "east" while any area north of I-10 is considered "north" any area "west" of San Geronio Avenue is "west" and any area south of I-10 is "south". While this layout may be considered geographically "skewed", because "east" Banning is only half the size of "west" Banning, it does follow the long established address numbering convention. For purposes of this discussion, we provide **Attachment 9**, which is a map that expresses the City as divided into three sectors: "east", "central" and "west". As shown, the following Agency projects have been identified, completed or is planned in "east" Banning. These include:

#### Completed Projects

- 1) Coplin House restoration
- 2) Chamber of Commerce restoration
- 3) Art Gallery acquisition and proposed renovation
- 4) Super-Subs renovation
- 5) Construction of Civic Center Parking lot and Streetscape
- 6) Construction of new Police Station
- 7) Acquisition of San Geronio Inn and West Coast Elect. properties for redevelopment
- 8) Acquisition /Assembly of Ehline properties for Courthouse development
- 9) Major storm drain improvements for Justice Center
- 10) Acquisition of Schraff property for development
- 11) Redevelopment of Carlton properties at Ramsey & Hargrave
- 12) Banning Municipal Airport Improvements on-site and offsite
- 13) Airport FBO Master plan
- 14) Property acquisition for former Drag City project

- 15) Property acquisition for former Liberty Energy project
- 16) Habitat for Humanity homes (Allen St. and Hargrave)
- 17) Assistance with/for Peppertree and Summit Ridge affordable housing complexes

Proposed/ Planned Projects

- 18) Hargrave and Ramsey Street and Intersection Improvements
- 19) East Ramsey Street Improvements
- 20) Potential Property Acquisitions - "east banning economic development plan"
- 21) Paseo San Gorgonio Master Plan Implementation
- 22) I-10 Bypass Road

Privately funded Projects with City/Agency Technical Assistance.

- 23) Burgess Redevelopment at Ramsey and Hargrave
- 24) Inland Behavioral & Health Clinic
- 25) O'Donnell Business Park
- 26) Messenger 60 Acres
- 27) Almond Way Improvements ( Nicolet to Indian School Lane)
- 28) Ramsey St Beautification Project
- 29) Roosevelt Williams Park Improvements

While the eastern part of Banning can be characterized as having blighting influences due to the age and condition of older residential neighborhoods, and because of older obsolete commercial uses along East Ramsey that once served as the California State Highway 99 prior to construction of Interstate 10 in the 1950's, it is clear that a significant amount of the Agency's effort has been in "east" Banning. Some of the largest investments by the Agency to date have been for projects east of San Gorgonio Avenue including: Mid-County Justice Center land acquisition and assembly, acquisition/assembly of the former San Gorgonio Inn for new mixed-use redevelopment, industrial land acquisition near the airport for job creating light industrial uses, and public facilities investment for a new public safety center and public parking facilities.

While we're not entirely sure of what the Grand Jury meant by "East Banning," it is likely that the Grand Jury may have been focusing more on the residential portions of "East Banning." With that in mind, we have also looked at the Agency's housing rehabilitation and First Time Homeowner's Programs. In fact, a majority of the Agency's affordable housing investment has been in neighborhoods east of San Gorgonio Avenue as shown in **Attachment 10** a map of residential rehabilitation projects completed by the Agency. Of the 74 residences identified, 34 are east of San Gorgonio, or some 45% of the assisted units. While Agency homeownership assistance has been more wide spread across the Project Area, as shown in **Attachment 11**, (Map of First Time Homebuyer Assistance), development of new affordable multi family units have replaced deteriorated neighborhoods and blighted areas with the development of Peppertree Apartments and Summit Ridge housing communities in east Banning. Combining the data from both Attachments 9 and 10, 36 of 94 units are in East Banning for an overall percentage of 38%. So the investment is not disproportionate.

Additionally, research of the Code Enforcement Division, which is funded by the Agency shows that of the total number of cases for the past three fiscal years, between 25% and 30% are attributed to work on the east side of Banning to eliminate blight, address code enforcement complaints and observations, address community livability and forward neighborhood preservation. See **Table 1** Below:

Year	Total # of cases	# Cases on the East Side	Percentage
F.Y. 07-08	839	246	29%
F.Y. 08-09	889	324	36%
F.Y. 09-10	247	89	36%

The Agency in no way wishes to minimize the challenges faced by our East Banning neighborhoods. There are significant problems as there are in other sections of the City. However, the impression left by the Grand Jury Report is that this area has been neglected in contrast to other areas of the City. While other areas have been bolstered by new development, the Agency has directed significant attention to East Banning and spent a disproportional amount of its housing dollars there. Even with this effort, much remains to be done.

5. **Need for Additional Staff.** *This Answer Is Incorporated In Number 3 Above.*
6. **Dodge Parcel.** *"In July 2009, The Redevelopment Agency Bought Property In The Western Side Of The City Without Acquiring Its Own Independent Certified Appraisal. Witnesses Testified That The Price Paid, \$1,200,000, Was Above Market Value. Since The Purchase, The Redevelopment Agency Board Has Budgeted An Additional \$800,000 To Make The Property More Desirable."*

By law, before initiating an action in eminent domain to condemn property, a redevelopment agency is required to obtain an appraisal of the fair market value of the property and determine the "just compensation" and make a written offer "for not less than the approved appraisal of the fair market value of the property." (Code of Civil Proc, §1245.230; Gov't Code §7267.2). This requirement is included in the eminent domain statute primarily to protect the property owner and assure that the public agency will pay "not less than" fair market value.

However, an agency may acquire property other than by condemnation (CCP §1230.030) and is encouraged to make every reasonable effort to acquire real property expeditiously by negotiation (Gov't Code §7267.1). Particularly, where property is offered by the owner for sale on the open market, a public agency is in the situation of any other interested buyer of property, and can negotiate the acquisition of the property for an agreed price. This is expressly permitted by Gov't Code §7267.2(d)(e) which permits a public entity to acquire property "offered for sale" to the "general public" at a specified price as long as the price is the same as the specified price and no federal funds are involved. As condemnation is often seen as a somewhat abusive process, and also involves significant legal expense, a public agency can fulfill its duty to negotiate in good faith to obtain <sup>property</sup> ownership. This can avoid the legal expense of condemnation, thus saving public dollars ("better to give it to the property owner than the lawyers"). Even if condemnation, settlements are reached at values beyond the agency's appraisal. After all, the key difference between condemnation and a voluntary acquisition is the mutual agreement of the parties on price, rather than the forced agreement under the threat of condemnation.

With these considerations in mind, it should be stated that it is generally the Agency's policy to obtain an appraisal, even in a voluntary acquisition, at least as a check that the voluntary acquisition price is not excessive. In the case of acquisition of the Dodge parcel, this was not done for reasons that seemed justified to the Agency, and which we would like to explain.

The owners of the Dodge Parcel were Patrick and Shirley DeZorzi. An automobile and truck dealership had been operated on the property for several decades as an important part of Banning's economy and most recently served as a Dodge /Chrysler dealership (All Star Dodge) prior to closing. All Star Dodge closed in October 2008 due to general economic conditions, and in January 2009 it was listed for sale at \$1,500,000. The brokers had several offers around this price for used car and recreational vehicle sales, but when the City Planner indicated that these uses were not permitted by zoning, these buyers lost interest.

After one month on the market, a potential buyer was found and a price was agreed to at \$1,200,000 with a 90 day escrow. The purchase price was to be paid with an initial payment of \$182,000, and the Seller carrying a first mortgage of \$1,020,000 for 8 years at an interest of 6% and payments of \$7,307.60, secured by an earnest money deposit of \$50,000.

The escrow was extended three times until June, 30, 2009 with non-refundable money released each time. The Buyers' plan was to bring a sales tax generating use back to the property. The Buyer wanted assistance from the Agency. Several meetings occurred between the Buyer and representatives of the Agency, but an agreement was not reached. On July 1, the Agency staff learned that the Seller would grant no further escrow extensions, and the Buyer was unwilling to go forward, so it appeared the transaction would collapse.

At that point the Agency proposed to Seller and Buyer that Agency would assume the purchase agreement on the same terms and conditions if the escrow could be extended for two weeks until the Agency's meeting on July 28, 2009. The parties agreed.

The Dodge Parcel at a price of \$1.2M has a 9,000 sq. ft. buildings on 1.45 acres, with a per sq. ft. value of \$133.33. The broker provided several sales as comps: (a) 1939 W. Ramsey (7/6/09) with a 1.23 acre parcel selling at \$565,000 (\$408/sq. ft.); (b) 50 S. Alessandro (8/26/08) with a .36 acre parcel selling at \$600,000 (\$122/sq. ft.); and had an appraisal of another property (c) 2415 Ramsey (10/3/08) with a 1.26 acre parcel appraised at \$1.075M (\$155/sq. ft). So the \$133.33 per sq. ft. price for the Dodge Parcel was in line with these valuations.

At the Agency's meeting of July 28, 2009, (**Attachment 12**) the Agency publicly agreed unanimously to proceed even though there was no appraisal for the following reasons:

- 1) The price had been reached on the open market between a willing buyer and willing seller and the Agency accepted the result of this negotiated value rather than initiating an involuntary acquisition.
- 2) There was no time to do an appraisal, which would likely have taken at least 6 weeks, and preserve the terms of the deal,
- 3) The transaction included a financing mechanism through the Seller, which is not generally available in Agency deals, and meant that the Agency only had to come up with \$200,000 cash. This left resources for other important Agency projects. This financing aspect of the transaction meant that an appraisal based on an all cash transaction was not applicable.

The Agency has been presented with no credible evidence that the \$1.2M price is above market value. The brokers handling the transaction opined that the price at \$133.33 per square foot was reasonable and in line with the market. In fact, there was a 20% reduction from the original \$1.5 asking price. The Seller financing terms were extremely attractive to the Agency leaving \$1M available for additional Agency projects. On this basis, the Agency proceeded and closed the deal.

The Agency is evaluating potential transactions for reuse of the property. No agreement has been reached with any party. It is not true that another \$800,000 has been budgeted to make the property more desirable, and the Grand Jury is misinformed about this.

7. **Cultural Alliance and Performance of Contracts.** *“On August 4, 2005 the city council voted to give the Alliance \$10,000. In the course of the next four years, the city council and the same people acting as the redevelopment agency board voted to give the Alliance a total of \$806,503.08 in public funds for a variety of uses (see appendix for a breakdown on the funds).... The following redevelopment activities were never performed: development of a downtown Property-Based Improvement District (PBID) and a campaign to market Banning with advertising on billboards, radio, television and infomercials.”*

The Agency has contracted with the Cultural Alliance since 2005 to provide services to the Agency that would forward downtown revitalization through the arts and cultural activities, community events, marketing, promotions and activities that support the downtown business community.

The Grand Jury has recommended that the Alliance be required to return \$52,000 to the Agency with interest because of the Alliance's failure to meet its contractual requirement to use \$34,000 to develop a PBID between 2006 and 2008, and \$18,000 to develop a PBID between 2008 and 2009. It would appear that the Grand Jury reached this conclusion based on the fact that the PBID was not developed.

As will be shown below, such a narrow definition of the word “develop” is not supported by either the language of the agreement itself or the subsequent conduct of the parties.

The services be provided by the Alliance regarding the PBID are listed in Exhibit A of the August 8, 2006 Agreement includes, Organization of a PBID in Downtown Banning, Hold General Informational meetings, Develop strategies, Define Boundaries, Create structure and Funding with City of Banning, and Develop and Distribute electronic newsletter to support creation of a PBID.

Before an itemization of how the Alliance met each requirement, the Agency would like to clarify that there was no requirement that the PBID be actually created in order for the Alliance to have met the terms of the contract. In the past, the Agency had failed to convince the Downtown Business and Property owners to approve a PBID and that is why they asked the Alliance to assist in the effort. The former Agency Redevelopment Director told the Alliance this was a long-term goal that could probably not be achieved for five to ten years, if at all. Nonetheless, the Alliance agreed to have this goal added to its contract.

In the subsequent 2008-2009 contract, Exhibit A (Scope of Services) states: “Establish a leadership group of property/business owners dedicated to forwarding downtown revitalization”

and the 2009-1010 contract which states: "A PBID is unrealistic in the current economic climate, the Alliance will, instead, continue to develop ways to promote downtown businesses, and bring them together". The Agency did not expect success within two years, but wanted the Alliance to help set the foundation for the future.

The Alliance provided the Agency with periodic reports showing the activity undertaken to achieve a PBID since the inception of the contract. These included:

1. **Hold General Informational meetings.** The first of a series of meetings with Downtown Businesses and Property owners were held on June 28, 2007. On November 18, 2008 a group of 15 agreed to form the "Downtown Banning Business Association" and they elected officers. The Alliance volunteered to complete the non-profit Corporation registration if the group needed help in completing it.
2. **Develop strategies.** Alliance presented the Agency with a 5 year Plan and a 5 year marketing plan in March 2007, and quarterly reports thereafter.
3. **Define Boundaries.** The proposed boundaries were set with a north boundary of the south side of Williams, a south boundary of the north side of Livingston, an east boundary of the west side of Alessandro and a west boundary of the east side of 4<sup>th</sup> St.
4. **Create structure and Funding with City of Banning.** As stated by the latest contract, the time is not yet right to create the PBID. Therefore, the Alliance continued to work with the property owners and businesses to help bring them together. They have helped the downtown business work towards an "association", offered to do the paperwork to form a non-profit corporation, and held downtown special events which included the participation of the downtown businesses. They entered into a cooperative effort with the University of Redlands, which thus far has led to the creation of a written "Revitalization Initiative Plan" which will be presented to the City/Agency. The design of a downtown map is in progress. Next fall, 5 downtown businesses will be chosen from those that apply on April 12<sup>th</sup>, to have a team of interns help them create an individual marketing strategy for their business.
5. **Develop and Distribute electronic newsletter.** The Alliance has had its web page and monthly newsletter since 2007.

The above clearly shows that the Alliance has fulfilled each portion of the scope of services outlined in the PBID section of the contracts. Since the successful completion of a PBID was not a requirement of the contract, the contract terms have been fulfilled.

The Grand Jury has recommended that the Alliance be required to return \$110,000 to the Agency with interest because of the Alliance's failure to "meet its contractual requirement to ... use \$110,000 for a marketing program between 2006 and 2008". It would appear that the Grand Jury reached this conclusion based on the fact that \$110,000 was not paid out to independent sources for a billboard or some other advertisement. This narrow definition of the contract is not supported by either the language of the agreement itself or the subsequent conduct of the parties.



At the time of the contract, the Agency was provided with the Alliance's proposed budget. On July 26, 2007, the Agency Board approved the work of the Banning Cultural Alliance performed to date for the revitalization of Downtown Banning and voted to approve the 2<sup>nd</sup> year of funding. The Alliance continued forward based on that vote in the same manner as it had the previous year while continuing to add to its activities, events and programs. The following year the Agency Board once again voted to give the Alliance a contract for an additional year.

The proposed annual budgets and quarterly reports submitted to the Agency showed how funds would be utilized by the Alliance, which included paying for the internal staff of the Alliance to manage the advertising programs, bus benches, ads in theatres, newspaper advertisements, commercials on the Time Warner Cable system, and tens of thousands of fliers.

Every activity/program of the Alliance constitutes marketing of downtown Banning. All proceeds spent by the Alliance were used to complete the scope of services set out in the contract.

The City/Agency received quarterly reports from the Alliance, held annual contract hearings, and the majority of the Agency Board at each hearing voted that the Alliance activities should be continued. We believe this is because the Agency Board found that the activities of the Alliance met the terms of the contracts, the programs constituted the marketing of downtown Banning, and that its activities are in fact having a positive result in the marketing of downtown.

8. **Cultural Alliance Contract.** *"The first two contracts covering the period between 2006 and 2009, followed the same format. The Alliance was given a check for the total at the beginning of the each contract year. The agreements contained no means to measure success or failure of the efforts by the Alliance, and they contained no criteria to determine whether the obligations were indeed fulfilled."*

The first two contracts with the Cultural Alliance did follow a specific format. They were lengthy contracts and did contain a comprehensive breakdown of all services requested. This is demonstrated by the Grand Jury's pointing out the breakdown of funding in those contracts. But the Grand Jury goes on to criticize the agreements for not containing criteria to determine if the obligations were fulfilled.

The Grand Jury fails to discuss the most recent contract entered into with the Cultural Alliance, a copy of which is attached as **Attachment 13**. On June 23, 2009, as part of its annual Budget adoption process, the Agency approved funding for the Cultural Alliance for FY 2009-2010, and was approved by the Agency for the period of July 1, 2009 through June 30, 2010 in the amount of \$131,000 and directed staff to prepare a contract for services subject to the approval of the Agency Counsel. This contract was negotiated under the direction of the Agency's new General Counsel. The contract was completed and executed in November of 2009. This contract contains a detailed breakdown of all tasks and subtasks, specific budget allocations and time periods for performance, and requires the quarterly posting of status reports.

For example, the annual contract is broken down into to three month periods to further specify activities and deliverables provided to the Agency and to improve the reporting required of the Cultural Alliance and to assist the reconciliation and review process conducted by the Agency. Services provide to the Agency in the past, such as "operate the downtown Center for

the Arts”, now include a further level of specificity to include a schedule of events, showings by date, and duration to detail the services received by the Agency. Likewise, the advertising and marketing deliverables in the contract include specific methods and detail of how the Cultural Alliance will promote the downtown business community and downtown district as a destination.

To illustrate, \$63,000 of the Contract Sum of \$131,500 (or about half the money) is allocated to Downtown Promotion, which breaks the compensation into seven categories including compensation to the Coordinator (\$37,500), Advertising (\$12,000) and Entertainment Events (\$13,500). In addition, the Cultural Alliance is required to hold, six specific events, from “Cool Summer Nights” to Phincas Festival to Art Hop. These events are to be conducted over 16 days spread out during the year.

Finally, a schedule has been developed to show when these events will be held each quarter and itemizing when payments would occur. The Payment Schedule relates the payment to the performance of each event. In the 1st quarter when the Cool Summer Nights events are held, there are now 12 identifiable elements with payments scheduled accordingly and a total compensation of \$15,888. This is done for each quarter, and in fact carried out for all services required under the Contract (See Addendum to Schedule D – Attachment 1, incorporated in **Attachment 13** and separately attached as **Attachment 14**). This new schedule is comprehensive and allows the City to closely scrutinize the Cultural Alliance’s performance.

We believe that the new format for the Cultural Alliance, already implemented prior to our receipt of the Grand Jury Report, addresses the concerns of the Grand Jury concerning the contractual accountability of the Cultural Alliance. Moreover, Article 7 of the contract has extensive provisions concerning the enforceability of the Contract. Again, these changes in our contract processes were initiated by Agency Counsel and were implemented before we received the Grand Jury’s Report. We trust that had the Grand Jury been aware of this, it would have found this contract adequate.

9. **Special Treatment of Cultural Alliance.** *“An examination of the relationship between the Alliance and the redevelopment agency revealed a willingness by the board to fund the group without any measure of accountability, without measures of success or failure and without demands for return of funds not spent on contractual obligations. No other outside organization in Banning has been treated this way by the board of the redevelopment agency.”*

The Agency strives to practice equitable treatment in its contracting. Since 2009, and well before we were aware of the Grand Jury concerns, under the supervision of our new Agency Counsel (hired at the end of 2008, staff has worked to improve the content and detail of Agency contracts so Agency vendors and consultants are under a set of uniform standards contained in the Agency’s model short and long form contracts to clearly detail metrics for performance, hold vendors accountable for performance, and to reconcile deliverables against expenses if needed.

In the case not only of the Cultural Alliance, but also the Banning Chamber of Commerce and Neighborhood Housing Services of the Inland Empire, Solution Works and Urban Futures Inc, the Agency’s larger contractors, the Agency has moved toward monthly, quarterly or at a minimum, semi-annual reporting of progress and results by the principals of these respective organizations in person to the Agency Board. This allows for frequent review of contract performance by staff and allows for Agency direction, praise, criticism, or other direct feedback

to recognize satisfactory performance or to identify the need for adjustments/improvements in performance. By way of this constant and routine oversight, potential problems can be identified early and adjustments /corrections can be made if necessary before a small problem or issue becomes a large one. Performance standards are more detailed with specific times for performance and budgets for specific tasks. Finally, the Agency reserves the right for adjustments in the final work products or deliverables within the framework of contract, as circumstances may dictate, as long as it is deemed a "like substitution" and the Agency has received the same value from one type of deliverable versus another, I.E.: a print advertisement versus a radio advertisement where either is sufficient to complete the task of "advertising".

In sum, the Agency disputes the finding that it treats the Cultural Alliance differently than other vendors in its contracting because the Agency utilizes a standard set of contracts that all contractors are required to use and the Agency subjects all contractors to period reporting and accountability and allows for adjustment and substitution of work products upon the mutual consent of both parties and appropriate approval(s).

## **B. RECOMMENDATIONS**

1. *"The Redevelopment Agency Should Develop A Prioritized List Of Redevelopment Projects To Justify Any Future Funding Through The Bonding Process. Further, Projects And Their Prioritization Should Be Widely Publicized And Then Reviewed By Members Of The Community For Their Input Prior To The Issuance Of Future Bonds."*

**Response:** The Agency has a prioritized list of redevelopment projects the most recent version of which is set for forth in **Attachment 2**. The Agency periodically reviews the list, with the most recent discussion being set for May 25, 2010. Any adoption or revision of such list has been and will be undertaken only at a public meeting publicized as required by the Brown Act. The Agency would also intend to do this before any future bond issue.

2. *"The Banning City Council And The Redevelopment Agency Should Consider Retaining An Outside Consultant To Ascertain From Employees Their Attitudes Toward Their Work Environment And Their Relationship With Policymakers. Further, The Leaders In Banning Should Take The Initiative To Establish Ongoing Workshops On The Role Of Policymakers And Employees And How To Improve Relations."*

**Response:** The City disagrees with this finding. The latest staff budget proposals for the next fiscal year include elimination of all parks and recreation staff; closing the pool, community center and senior center; laying off 20 employees, and eliminating four police civilian employees and four police officers. The State of California has just taken \$1.9M of our redevelopment funds. The City does not have the financial resources to conduct a survey, hold workshops or hire a consultant to address employee / policymaker relations. The current Executive Management Team and staff have a positive and productive relationship with the City's policy makers (City Council, Agency Board, and Planning Commission); and are bearing up as well as can be expected in this fiscal emergency. Despite the challenges of layoffs, cutbacks, work furloughs and other issues, the staff has performed well and with a good attitude. An outside consultant will not be able to

appreciably affect, employee morale in the face of these challenges. With the hiring of the new City Manager, one with very strong leadership skills and capabilities, both with staff and the City Council, we do not believe it is necessary bring in an outside consultant at significant expense which we cannot afford. Mr. Takata has over 15 years of City management experience in three other highly successful cities. Mr Takata has reinforced that Banning operates under a Council/Manager form of government and that all communication should flow through his office and not directly to individual staff members.

3. *“The Redevelopment Agency Board Should Prioritize How Facade Improvement Money Is Spent. First Priority Should Be Given To Owners Of Buildings Where Businesses Are Operating; Second Priority Should Go To Building Owners Who Have A Commitment To Rent A Vacant Structure; And Lowest Priority Should Be Instances Where A Building Owner Seeks Redevelopment Money For A Vacant Building.”*

**Response:** The Agency disputes this finding because based upon the review of the implementation of the Facade Improvement Program by the Agency, as detailed in preceding **Section 3**, under Findings, it is clear that the Agency has not, *“Committed Funds For Improving The Appearance Of Vacant, Un-rented Property While Ongoing Businesses Are Made To Wait For Assistance.”* as alleged by the Grand Jury, but rather has generally assisted occupied properties (12 of 14) businesses and does not make occupied businesses wait for program assistance.

The Grand Jury is simply mistaken as to where the Façade Program funds have been spent. We have program guidelines which make funds available for occupied properties to promote business retention as well as unoccupied properties to promote the recruitment of new businesses. We give no priority to either. In the normal course of accepting and processing applications, the majority of assisted properties have been occupied properties. The Agency has not received complaints over an award of funding. There is no need for the priorities suggested by the Grand Jury. We will continue to monitor suggestions from the public and property owners and adjust the program in the future if warranted.

4. *“The redevelopment agency should commit now to a major improvement program over the next 10 years to reduce the blight in East Banning.”*

**Response:** The Agency does not disagree with this recommendation as long as it is recognized that the Agency has made and continues to make significant investment in projects in “East” Banning. As discussed in **Section 4** above, the Agency has made considerable investment to relieve blighting influences in “east” Banning. The Agency is mindful of trying to balance its investments across the entire project area and to not ignore any area of need. The disparate land uses, fragmented ownership, obsolete commercial uses, aged housing stock, and volume of poor quality land often lacking basic infrastructure make the eastern portion of the project area particularly difficult to incentivize private development and cost prohibitive to solve strictly through public projects.

To date, following a closer review it can be seen that the Agency's largest investments have been in redevelopment and housing actives east of San Gorgonio Avenue, with the downtown town core area second, and investment in projects on the west end of town ranking third.

As shown in Attachment 1, discussed in Section 4, \$1,500,000 has been identified for improvements near Hargrave Street and East Ramsey Street, \$275,000 has been identified for East Ramsey Street beautification, and some portion of the \$1,925,000 identified for property acquisition is intended for future projects in "east" Banning.

The Agency agrees that further work is necessary to eliminate blight in the eastern part of the City. As such, the Agency has identified in its current work plan, several projects as shown in Attachment 2 to continue to prioritize blight elimination in "East" Banning. Beyond the work that planned or underway, the Agency agrees that blight elimination should be sustained over a long term period, as long as revenues are available in the future to improve the appearance and condition of the eastern part of Banning.

5. *"The Redevelopment Agency Board Should Consider The Hiring Of An Additional Staff Person To Help In Monitoring Current Projects And Administering Programs."*

**Response:** Additional staff (Dirk Voss, Project Coordinator) was hired on February 24, 2010, as discussed in Findings Response No. 2 above. Additionally, the Agency uses extensive consultant resources as needed to manage its workload. For the foreseeable future, until economic conditions improve, the Agency Board believes the current staffing level as supplemented with consultant services will have to suffice.

6. *"All Future Development Property Purchases By The Redevelopment Agency Must Include An Independent Certified Appraisal Ordered By The Redevelopment Agency Staff."*

**Response:** The Agency's policy is to always obtain independent appraisals when legally required, and to generally obtain them for all other transactions. However, in an urgent situation where an appraisal is not legally required and there is no time to obtain one, if the Agency has the opportunity to acquire property in the open market without a forced acquisition through condemnation, the Agency reserves the right to take advantage of such a situation and proceed without an appraisal if warranted. This is particularly so where favorable financing terms are negotiated.

7. *"The redevelopment agency board should enforce the immediate return of \$162,000 of public money from the Banning Cultural Alliance in accordance with the terms of the contracts. The amount arises from the Alliance failing to meet its contractual requirement to use \$34,000 to develop a PBID; to use \$110,000 for a marketing program between 2006 and 2008; and \$18,000 to develop a PBID between 2008 and 2009. A reasonable rate of interest on the amount should also be included."*

**Response:** The Agency disagrees with this recommendation. The Agency has been embarking on a major revitalization of its blighted downtown. The Agency through the Façade and Owner Participation Program has revitalized buildings in order to encourage new businesses, but has also felt it needed assistance in strategies to bring people back Downtown. The Agency contracted with the Banning Cultural Alliance to produce events and promotional activities, public relations and marketing to do just that. Although the contract and performance guidelines initially could have been clearer and more precise, as has been recently instituted with the Alliance's current contract (**Attachment 12**), it is the opinion of the Agency that it has received the support and services, to accomplish the overall goals of bringing people Downtown, through the Alliance's advertising, public relations, events and activities and the Cultural Alliance has adequately fulfilled its contract.

Likewise, funds designated for the creation of a PBID but utilized for other public relations and marketing categories are listed in the Contract. At an Agency public meeting the Alliance made the recommendation to the Agency Board that given the very small number of businesses Downtown, their lack of confidence in the City, along with a disastrous economy, meant it wasn't prudent to proceed with trying to establish a PBID at this time.

In summation the money alluded to by the Grand Jury did not disappear but was utilized using different methods and marketing strategies, to accomplish the same goals as agreed to, and were reported to the Agency, verbally in reports and in writing. To avoid future issues, the new contract has been more explicitly outlined, along with performance goals, as previously discussed in regard to more clearly written contracts with performance measures clearly outlined. Accordingly, the Agency believes that the taxpayers of Banning received goods and services that were covered by the referenced \$162,000.00 and helped produce multiple events bringing thousands of people downtown, over time, as well as the sponsorship of multiple activities at the Banning Women's Club, creation of the Pass Area Performing Arts Group, multiple visual and art programs for the youth of Banning, Diversity Programs and support for the visual and performing arts programs in Banning.

8. *"The Redevelopment Agency Board Should Include In All Of Its Contracts With Personal Services Suppliers And Outside Organizations Provisions For Measurement Of Success Or Failure And Of Fulfillment Or Non-Fulfillment Of The Obligations Assumed. Penalties And/Or Termination Provisions For Nonperformance Should Be Included."*

**Response:** The Agency agrees. In fact, the Agency's current form agreements and practices conform with the Grand Jury's recommendations that they contain criteria to measure performance and penalty and termination provisions for non-performance.

9. *"The Redevelopment Agency Board Should Immediately Cease And Desist Awarding Any Redevelopment Funds To The Cultural Alliance."*

**Response:** The Agency believes that its revitalization, redevelopment and economic development strategy is working in downtown Banning and that the vast majority of Banning residents appreciate the "new" Downtown Banning.

The Grand Jury needs to step back and look broadly at what has been accomplished in Banning, particularly in the Downtown, and see this in the context of the current national recession. Less than five years ago Banning had five major development projects being actively pursued with some 5000 units proposed, which could have almost doubled the population of the City. Now, virtually all these projects are in abeyance and, housing prices have collapsed, not just in Banning or Riverside County, but in throughout the State and the Nation. Against these general trends, what has the Agency accomplished in Banning?

The Agency has a well thought out revitalization strategy for Downtown, including the following components: (i) the Façade program which has renovated many buildings and made the Downtown attractive, (ii) entering into Owner Participation Agreements, as encouraged by the Community Redevelopment Law, to assist existing owners to make major investments in designated properties such as the Oddfellows Building and Fox Theater to create a Downtown entertainment district, (iii) developing a downtown master plan (Paseo San Gorgonio design plan) to enhance properties, (iv) developing a \$60M regional Mid-County Justice Center to bring hundreds of people everyday to Downtown who will support services there, (v) entering an exclusive negotiation agreement with a developer actively working to develop the San Gorgonio Inn Site, (vi) adding new public infrastructure and amenities such as an Art Park; and (vii) enhancing the City's Civic Center, including with a new police station enhancing security. Collectively, these actions have caused a major change in the perception of, and willingness of residents and tourists to visit Downtown Banning.

A critical component of this program, to be fully successful, is to create a sense of place, including events to bring people Downtown. The original and continuing strategy of the Agency includes the purchase of services from the Alliance to deal with the "human/people" side of the equation, which is to bring people Downtown to shop, play, eat and be entertained.

The Banning Cultural Alliance is a volunteer organization made up of a very broad-based group of community leaders who with honesty and integrity have worked to fulfill their part of accomplishing the Agency's goal of a revitalized Downtown Banning to produce a sense of place for all residents as well as creating an attractive place to locate new retail establishments and professional office facilities. Some of the tasks the Alliance has have been asked to perform have been very difficult and the Agency Board has received regular reports, monitored their efforts, and reprogrammed their efforts as needed.

Overall, the Agency Board believes the Cultural Alliance has been an extremely effective partner in our redevelopment program, which is bearing surprising success given the extremely adverse general economic conditions. In such times

it could not be expected that every event or every development plan could meet our full expectations. But our Downtown looks the best it has in its entire history ever, we now enjoy an entertainment district, we have a \$60M Justice Center coming, we have an active redevelopment project for the San Geronio Inn Site, and we have the Cultural Alliance working on events such as Cool Summer Nights, the Pass Has Talent, Phineas Festival, Art Hop, Halloween Festival, Artist Hanging, and others which has brought thousands of visitors to Downtown. When viewed in this light, and in the context of the reality of the current economic conditions, we believe our program should be seen as a model for what public-private partnerships can achieve.

**END**





**COMMUNITY REDEVELOPMENT AGENCY MEETING  
REPORT OF OFFICERS**

**DATE:** August 25, 2009  
**TO:** Community Redevelopment Agency Board  
**FROM:** Sam Racadio, Interim Executive Director  
**SUBJECT:** CRA 2007 Bond Projects

**RECOMMENDATION:**

That the Agency Board review the status of major Community Redevelopment Agency projects as identified in the "2007 CRA Bond Proceeds-Allocation Detail" report and provide direction to the Executive Director regarding the status of major Agency projects.

**JUSTIFICATION:**

In order to best plan and prioritize the activities of the Community Redevelopment Agency, periodic status reports are necessary to align and guide the Agency work plan.

**BACKGROUND:**

At the July 14, 2009, Regular Meeting of the Community Redevelopment Agency, the Board directed the Executive Director to bring forward a status report on Agency Bond Proceeds-Allocation Detail Report.

**DISCUSSION:**

The attached 2007 CRA Bond Proceeds-Allocation Detail report, **Attachment 1**, was last reviewed by the Agency Board in August of 2008. Since that time, several major projects have advanced or been completed and the current status of major Agency projects warrants discussion by the Board and direction to Staff.


**FISCAL DATA:**

There is no direct fiscal impact associated with the review and discussion of this report. Should the Board direct staff to add, remove or change major projects listed in the "2007 CRA Bond Proceeds-Allocation Detail" report, staff would need to analyze the fiscal impact of the direction by the Board and return at a future meeting to discuss / present the fiscal impact of the Board's direction.

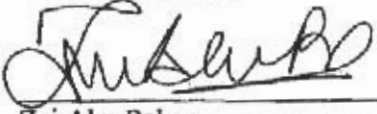
**CONCLUSION:**

It is respectfully recommended that the Board review the "2007 CRA Bond Proceeds-Allocation Detail" report, provide direction to the Executive Director regarding the status of major Community Redevelopment Agency projects.

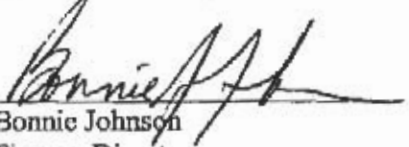
**RECOMMENDED BY:**

  
\_\_\_\_\_  
Sam Racadio  
Interim Executive Director

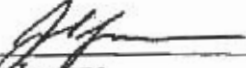
**APPROVED BY:**

  
\_\_\_\_\_  
Zai Abu Bakar  
Community Development Director

**REVIEWED BY:**

  
\_\_\_\_\_  
Bonnie Johnson  
Finance Director

**PREPARED BY:**

  
\_\_\_\_\_  
John Jansons  
Redevelopment Manager

**ATTACHMENTS:**

- 1) 2002 CRA Bond Proceeds – Allocation Detail

# 2007 CRA BOND PROCEEDS - ALLOCATION DETAIL

PROJECT CODE	PROJECT DESCRIPTION	TOTAL ESTIMATED COST			OTHER FUNDING SOURCES			NOTES / COMMENTS
		BOND FUNDS ALLOCATED	STATUS	PROJECTS ON HOLD	POTENTIAL REVENUE SOURCE (M)	AMOUNT		
<b>PROPERTY ACQUISITION DETAIL</b>								
A.1	CENTER FOR THE ARTS PROPERTY ACQUISITION (GLICK) EHLINE	\$ 453,711	Completed	\$ -	Lease Payments	TBD	Rent Receipts from Tenant	
A.2	PROPERTY ACQUISITION SAN GORGONIO INN	\$ 3,880,169	Completed	\$ -	Purchase/ Sale Agreement	\$ 1,009,000	Proceeds from Sale to State of CA	
A.3	PROPERTY ACQUISITION	\$ 1,820,544	Completed	\$ -	N/A	N/A	Banning Town Center Redevelopment Project	
A.4	SCHARFF ACQUISITION (40 ACRES) PROPERTY ACQUISITION	\$ 2,864,550	Completed	\$ -	N/A	N/A	TBD: Light Industrial Development Site Former Drag City Silla	
A.5	BANNING AIRPORT ASSOC. PROPERTY ACQUISITION	\$ 430,798	Completed	\$ -	Purchase/ Sale Agreement	\$ 431,298	Utility Dept to Reimburse CRA - Purchased for Energy Plant	
A.6	WEST COAST ELECTRIC PROPERTY ACQUISITION	\$ 601,018	Completed	\$ -	N/A	N/A	Banning Town Center Redevelopment Project	
A.7	ALL STAR DODGE FACILITY W RAMSEY	\$ 1,020,000	Completed	\$ -	DDA	TBD	Retail Opportunity Purchase	
<b>PUBLIC IMPROVEMENT PUBLIC WORKS PROJECTS APPROVED AND COMPLETED</b>								
P.1	CITY HALL / BENHAR (SUPER SUBS) PARKING LOT IMPROVEMENTS	\$ 485,237	Completed	\$ -	N/A	N/A	Completed	
P.2	DESIGN & CONSTRUCTION STORM DRAIN LINE D (EMING)	\$ 2,012,176	Active	\$ -	N/A	N/A	Est. Completion Oct. '09	
P.3	*AIRPORT MASTER PLAN FBO	\$ 250,000	Appropriation Needed	\$ -	N/A	N/A	RFQ/RFP 08-10 (No encumbrances)	
P.4	FAÇADE APPROVALS (4)	\$ 545,710	Active	\$ -	N/A	N/A	Owner Grant Agreements 8/09 Work Underway	
P.5	FOX THEATER (OPA)	\$ 1,363,348	Active	\$ -	N/A	N/A	\$1.9 M Committed as of 7-09, Need Art Park-Additional Parking Lot Project Cost Estimate	
P.6	FOX THEATER/ART PARK/FACADES & OPAS (FUNDS REMAINS FROM \$2,500,000 ALLOCATION)	\$ 590,942	Active	\$ -	N/A	N/A	Need to set-up separate project and separate from P.6	
P.6.1	ART PARK in P.6 HAS EXPANDED SCOPE TO INCLUDE COMMON AREA PARKING CONSTRUCTION AND UTILITY WORK	\$0	In Design				Community College Sita Development	
P.6	MT SAN JACINTO COLLEGE SITE PREPARATION	\$ 750,000	Active				Asbestos Abatement, Remove UST and Soil Remediation and Site Preparation	
P.7	SAN GORGONIO INN SITE PREPARATION FOR REDEVELOPMENT	\$0	TBD				Readiness of Private Development Uncertain (No encumbrances)	
<b>PUBLIC IMPROVEMENT PUBLIC WORKS PROJECTS STATUS PENDING (TBD)</b>								
H.10	*HARGRAVE/RAMSEY STREET INTERSECTION IMPROVEMENTS (SOLAMAIN PLAZA)	\$ -	TBD	\$ 1,500,000	N/A	N/A	TBD	
H.2	*ROOSEVELT WILLIAMS PARK	\$ -	TBD	\$ 1,550,000	N/A	N/A	Not in RDA Project Area	
H.3	*LIONS PARK (SOCCER FIELDS, LIGHTING AND PARKING LOT)	\$ -	TBD	\$ 500,000	N/A	N/A	TBD	
H.4	*RAMSEY STREET BEAUTIFICATION	\$ -	TBD	\$ 500,000	N/A	N/A	Pending Status of Banning Business Center	
H.5	*8TH & UNCOLN STREET STREET REHABILITATION	\$ -	TBD	\$ 500,000	N/A	N/A	Pending Status of Banning Business Center	
H.6	*8TH STREET & I-10 INTERCHANGE SIGNALIZATION	\$ -	TBD	\$ 500,000	N/A	N/A	New Estimate of \$1.5 M	
H.7	*I-10 & 8TH STREET INTERCHANGE	\$ -	TBD	\$ 2,000,000	N/A	N/A		

H.8	*RAMSEY STREET IMPROVEMENTS FROM GRAND VIEW AVENUE TO APEX	\$ -	TBD	\$ 1,701,000	N/A	N/A	Activate in 09-10, Includes Approved Beaver Medical Turn Pocket Project
H.9	*ALMOND WAY STREET IMPROVEMENTS (NICOLET TO INDIAN SCHOOL LANE)	\$ -	TBD	\$ 1,040,000	N/A	N/A	TBD
* DENOTES ON HOLD							
TOTALS		\$ 15,958,203	\$ 10,941,000	\$ 440,298			

**2007 GRA BOND PROCEEDS ALLOCATION RECAP**

PROPERTY ACQUISITION	\$ 10,860,760
PUBLIC WORKS/IMPROVEMENT	\$ 3,848,355
FAÇADE, OPA & FOX THEATER	\$ 590,942
<b>TOTAL ALLOCATION</b>	<b>\$ 15,300,057</b>
FUNDS SET ASIDE	\$ 15,300,087
FUNDS TO BE ALLOCATED	\$ -
<b>TOTAL PROJECTS FUNDS</b>	<b>\$ 15,300,087</b>
TOTAL BOND PROCEEDS	\$ 24,940,342
INTEREST EARNINGS TO DATE	\$ 1,425,318
<b>TOTAL BOND FUNDS</b>	<b>\$ 26,365,660</b>
TOTAL BOND FUNDS	\$ 26,365,660
TOTAL ALLOCATION	\$ 15,300,087
<b>BOND FUNDS REMAINING</b>	<b>\$ 11,065,573</b>

\*PROJECTS ON HOLD (TOTAL) \$ 10,841,000

**BANNING COMMUNITY REDEVELOPMENT AGENCY  
2009-10 BUDGET RECAP**

	Low/Mod Housing (fd 810)	Debt Service (fd 830)	CRA Admin. (fd 860)	2007 Bond Proceeds (fd 855)	2003 Bond Proceeds (fd 856)	2003 Low/Mod Bond Proceeds (fd 857)	Capital Projects Tax Increment (fd 860)
<b>Revenue:</b>							
Interest Income	45,000	85,000	400	75,000	5,000	20,000	25,000
Lease Income			9,000				
Tax Increment		5,253,020					
Transfer from Debt Service (1)	1,048,064		632,486				1,000,000
Transfer from Low/Mod fund to pay 2003 bonds		192,688					
<b>Total</b>	<b>1,093,064</b>	<b>5,530,708</b>	<b>641,886</b>	<b>75,000</b>	<b>5,000</b>	<b>20,000</b>	<b>1,025,000</b>
<b>Expenditures: (3)</b>							
Salaries/Benefits	76,970		413,759				282,570
Services and Supplies	236,004		72,321				422,780
Cost Allocation payments	47,687		132,178				
Debt service payment (xfer to fd 830)		963,439					
Debt Service payments - 2003 bonds		1,483,291					
Debt Service payments - 2007 bonds		20,531					
Glick Note							
Pass-Through obligations		851,520					
20% set-aside to Low/Mod		1,060,764					
Other Misc Expenses		95,145					
Transfer to Admin (fd 850)		632,486					
Transfer to Projects (fd 860) (2)		1,000,000					
Bond Projects (appropriated in 2009-10)				750,000			
<b>Total</b>	<b>553,349</b>	<b>6,107,176</b>	<b>618,258</b>	<b>750,000</b>	<b>-</b>	<b>-</b>	<b>715,350</b>
<b>Net Income (expense)</b>	<b>539,715</b>	<b>(576,468)</b>	<b>23,628</b>	<b>(675,000)</b>	<b>5,000</b>	<b>20,000</b>	<b>309,650</b>
<b>Estimated June 30, 2010 Fund Balances</b>	<b>4,259,304</b>	<b>1,024,220</b>	<b>88,643</b>	<b>11,065,573</b>	<b>1,563,743</b>	<b>1,713,729</b>	<b>3,919,701</b>

Estimated 2009-10 ERAF \$1,904,182  
Estimated 2010-11 ERAF \$392,038

- 1) 20% of tax increment
- 2) transfer of excess increment to project fund
- 3) expenditures in bond fds. are appropriated when project is approved.





**COMMUNITY REDEVELOPMENT AGENCY MEETING  
REPORT OF OFFICERS**

**DATE:** September 8, 2009

**TO:** Community Redevelopment Agency Board

**FROM:** Sam Racadio, Interim Executive Director

**SUBJECT:** CRA 2007 Bond Funded Project List - Work Session

**RECOMMENDATION:**

That the Agency Board conduct a work session to review the status of major Community Redevelopment Agency projects as identified in the "2007 CRA Bond Funded Project List" and provide direction to the Interim Executive Director regarding committed, planned, and potential major Agency projects.

**JUSTIFICATION:**

In order to best plan and prioritize the activities of the Community Redevelopment Agency, periodic review of projects and priorities is necessary to align and guide the Agency work plan. A work session will afford the Board greater time to discuss this matter in more detail.

**BACKGROUND:**

At the August 25, 2009, Regular Meeting of the Community Redevelopment Agency, the Board received and considered the Agency Bond Proceeds-Allocation Detail Report.

Given the importance and complexity of the issues at hand regarding project funding, prioritization, timing, etc. the Board directed staff to return to the September 8, 2009 Agency meeting and conduct a work session on this topic to provide for more time and more thoughtful deliberations.

**DISCUSSION:**

Following the August 25, 2009 meeting, the Interim Executive Director met with Executive team staff and Agency Counsel to discuss this matter further. One result of this follow-up was a decision to reconfigure the substance of the prior report to make the information more easily communicated and discerned. To this end, staff has prepared **Attachment No. 1** to this report to represent the information in categories that include:

- **Committed Projects**
- **Planned Projects**
- **Potential Projects** ( projects the Board or Community have expressed an interest in pursuing, but that have not yet entered the planning, work or investment stage)

It is recommended that the focus of the Board's discussion address the planned and potential projects to determine if they should be reprioritized, (advanced, canceled, or delayed), or if new/additional projects should be added to either section as determined by the Board.

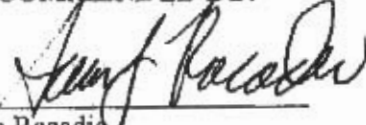
**FISCAL DATA:**

There is no direct fiscal impact associated with the review and discussion of this report. Should the Board direct staff to add, remove or change major projects listed in the "2007 CRA Bond Funded Project List", staff would need to analyze the fiscal impact of the direction of the Board and return at a future meeting to discuss/present the fiscal impact of the Board's decision/direction.

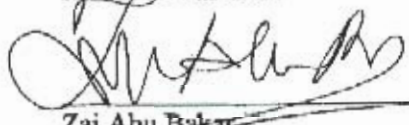
**CONCLUSION:**

It is respectfully recommended that the Board review the "2007 CRA Bond Funded Project List", and provide direction to the Executive Director regarding the status of major Community Redevelopment Agency projects.

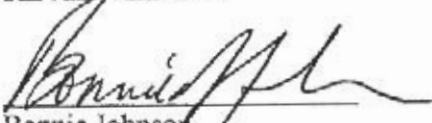
**RECOMMENDED BY:**

  
\_\_\_\_\_  
Sam Racadio  
Interim Executive Director

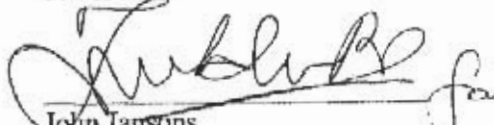
**APPROVED BY:**

  
\_\_\_\_\_  
Zai Abu Bakar  
Community Development Director

**REVIEWED BY:**

  
\_\_\_\_\_  
Bonnie Johnson  
Finance Director

**PREPARED BY:**

  
\_\_\_\_\_  
John Jansons  
Redevelopment Manager

Attachment:

1. 2007 CRA Bond Funded Project List

# **ATTACHMENT 1**

## **2007 CRA Bond Funded Project List**

## **2007 CRA BOND PROCEEDS - SUMMARY**

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### **BOND PROCEEDS AVAILABLE**

BOND PROCEEDS	\$ 24,940,342
INTEREST EARNINGS TO DATE	\$ 1,425,318
	<u><b>\$ 26,365,660</b></u>

### **BOND FUNDS ALLOCATED**

TOTAL COMMITTED PROJECTS	\$ 15,957,261
TOTAL PLANNED PROJECTS	\$ 1,340,942
	<u><b>\$ 17,298,203</b></u>

### **BOND FUNDS REMAINING**

TOTAL BOND PROCEEDS	\$ 26,365,660
LESS: TOTAL BOND FUNDS ALLOCATED	\$ 17,298,203
	<u><b>\$ 9,067,457</b></u>

### **OTHER PROJECTS (1)**

COMMITTED PROJECTS	\$ 250,000
PLANNED PROJECTS	\$ 250,000
POTENTIAL PROJECTS	\$ 10,215,000
	<u><b>\$ 10,715,000</b></u>

### **POTENTIAL REVENUE**

COMMITTED PROJECTS	<u><b>\$ 1,440,298</b></u>
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(1) No funding for this category has been formally set aside or approved by the CRA Board.

**2007 CRA BOND PROCEEDS - COMMITTED PROJECTS**

PROJECT CODE	PROJECT DESCRIPTION	TOTAL ESTIMATED COST			OTHER FUNDING SOURCES			NOTES / COMMENTS
		BOND FUNDS ALLOCATED	STATUS	POTENTIAL PROJECTS	POTENTIAL REVENUE SOURCE	AMOUNT		
A.1	CENTER FOR THE ARTS PROPERTY ACQUISITION (GLICK)	\$ 483,711	Completed	\$ -	Lease Payments	TBD	Rent Receipts from Tenant	
A.1.1	CENTER FOR THE ARTS PROPERTY IMPROVEMENTS	\$ 250,000	not started	\$ -	N/A	N/A	Per Board approval, May 27, 2008 and Lease August 1, 2009	
A.2	PROPERTY ACQUISITION EHLINE	\$ 3,660,169	Completed	\$ -	Purchase/Sale Agreement	\$ 1,009,000	Proceeds from Sale to State of CA	
A.3	SAN GORGONIO INN PROPERTY ACQUISITION	\$ 1,820,644	Completed	\$ -	Potential resale	TBD	Banning Town Center Re-development Project	
A.4	SCHARFF ACQUISITION (40 ACRES) PROPERTY ACQUISITION	\$ 2,854,550	Completed	\$ -	N/A	N/A	TBD. Light Industrial Development Site Former Drag City Site	
A.5	BANNING AIRPORT ASSOC. PROPERTY ACQUISITION	\$ 430,798	Completed	\$ -	Purchase/Sale Agreement	\$ 431,298	Utility Dept to Reimburse CRA - Purchased for Energy Plant	
A.6	WEST COAST ELECTRIC PROPERTY ACQUISITION	\$ 601,018	Completed	\$ -	Potential resale	TBD	Banning Town Center Re-development Project	
A.7	ALL STAR DODGE FACILITY RAMSEY 2301 W	\$ 1,200,000	Completed	\$ -	Potential resale	TBD	\$1.2 is total purchase price; upfront funds of \$182,393 (deposit and other costs); note of \$1,020,000 to be paid over 7 years - \$7,307.80 per month	
A.8	CITY HALL / BENHAR (SUPER SUBS) PARKING LOT IMPROVEMENTS	\$ 496,237	Completed	\$ -	N/A	N/A	Completed	
A.9	DESIGN & CONSTRUCTION STORM DRAIN LINE D & OTHER IMP'S (JUSTICE CENTER)	\$ 2,012,176	Active	\$ -	N/A	N/A	Est. Completion Oct. '09	
A.10	*AIRPORT MASTER PLAN FBO	\$ 250,000	Appropriation Needed	\$ -	N/A	N/A	RFO/RFP 09-10 (No encumbrances)	
A.11	FAÇADE APPROVALS (4)	\$ 545,710	Active	\$ -	N/A	N/A	Owner Grant Agreements 9/09	
A.12	FOX THEATER (OPA)	\$ 1,363,348	Active	\$ -	N/A	N/A	Work Underway	
A.13	SAN GORGONIO INN SITE PREPARATION FOR DISPOSITION	\$ 0	TBD	\$ 250,000	N/A	N/A	Asbestos Abatement, Remove UST and Soil Remediation and Site Preparation	
A.14	SAN GORGONIO INN DEVELOPER ASSISTANCE & OTHER COSTS	\$ 0	TBD	TBD	N/A	N/A		

**TOTAL**      \$ 15,957,261      \$ 250,000      \$ 1,440,298

**2007 CRA BOND PROCEEDS - PLANNED PROJECTS**

PROJECT CODE	PROJECT DESCRIPTION	TOTAL ESTIMATED COST			OTHER FUNDING SOURCES			NOTES / COMMENTS
		BOND FUNDS ALLOCATED	STATUS	POTENTIAL PROJECTS	POTENTIAL REVENUE SOURCE	AMOUNT		
B.1	FACADES & OPAS (FUNDS REMAINING FROM \$2,500,000 ALLOCATION)	\$ 290,942	Active	5	N/A	N/A	\$1.6 M Committed as of 7-06. Neec. At Park-Additional Parking Lot Project Cost Estimate	
B.1.1	ART ALLEY IN B.1 HAS EXPANDED SCOPE TO INCLUDE COMMON AREA PARKING CONSTRUCTION AND UTILITY WORK	\$ 300,000	In Design		N/A	N/A		
B.2	MT SAN JACINTO COLLEGE SITE PREPARATION	\$ 750,000	Active		N/A	N/A	Community College Site Development	
B.3	RAMSEY STREET IMPROVEMENTS: GRAND VIEW TO APEX	\$ -	TBD	TBD	N/A	N/A	TBD: Improvements and right-of-way acquisition required	
B.3.1	BEAVER MEDICAL TURN POCKET	\$ -	TBD	250,000	N/A	N/A		
<b>TOTAL</b>		<b>\$ 1,340,942</b>		<b>\$ 250,000</b>				

2007 CRA BOND PROCEEDS - POTENTIAL PROJECTS

PROJECT CODE	PROJECT DESCRIPTION	TOTAL ESTIMATED COST			OTHER FUNDING SOURCES			NOTES / COMMENTS
		BOND FUNDS ALLOCATED	STATUS	POTENTIAL PROJECTS	POTENTIAL REVENUE SOURCE	AMOUNT		
C.1	HARGRAVER/RAMSEY STREET INTERSECTION IMPROVEMENTS (SOLAMAIN PLAZA)	\$ -	TBD	\$ 1,500,000	N/A	N/A	Readiness of Private Development Uncertain (No encumbrances)	
C.2	ROOSEVELT WILLIAMS PARK	\$ -	TBD	\$ 1,550,000	N/A	N/A	TBD	
C.3	RAMSEY STREET BEAUTIFICATION	\$ -	TBD	\$ 500,000	N/A	N/A	TBD	
C.4	8TH & LINCOLN STREET STREET REHABILITATION	\$ -	TBD	\$ 500,000	N/A	N/A	Pending Status of Banning Business Center	
C.5	6TH STREET & I-10 INTERCHANGE SIGNALIZATION	\$ -	TBD	\$ 500,000	N/A	N/A	Pending Status of Banning Business Center	
C.6	I-10 & 8TH STREET INTERCHANGE	\$ -	TBD	\$ 1,500,000	N/A	N/A		
C.7	ALMOND WAY STREET IMPROVEMENTS (NICOLET TO INDIAN SCHOOL LANE)	\$ -	TBD	\$ 1,040,000	N/A	N/A	TBD	
C.8	PASEO SAN GORGONIO IMPLEMENTATION	\$ -	TBD	TBD	N/A	N/A	TBD	
C.9	EAST RAMSEY STREET IMPROVEMENTS	\$ -	TBD	TBD	N/A	N/A	TBD	
C.10	ADDITIONAL FUNDING FOR FAÇADE PROGRAM	\$ -	TBD	\$ 700,000	N/A	N/A	Original \$2.6 million allocation almost fully committed; see project B.1 for status.	
C.11	INLAND BEHAVIORAL HEALTH CLINIC - EAST RAMSEY	\$ -	TBD	TBD	N/A	N/A		
C.12	SUNSET PLAZA - RAMSEY AND SUNSET	\$ -	TBD	\$ 500,000	N/A	N/A		
C.13	PADDY O'REILLY'S - FAÇADE AND EASEMENT	\$ -	TBD	TBD	N/A	N/A		
C.14	POTENTIAL PROPERTY ACQUISITIONS	\$ -	TBD	\$ 1,925,000	N/A	N/A	To be discussed in a future closed session	
C.15	8TH AND LINCOLN DEVELOPMENT	\$ -	TBD	TBD	N/A	N/A		
C.16	MESSENGER 60 ACRES	\$ -	TBD	TBD	N/A	N/A		
C.17	INFRASTRUCTURE TO SUPPORT BUS PARK ON EAST END	\$ -	TBD	TBD	N/A	N/A		
TOTAL		\$ -		\$ 10,215,000				





**2007 CRA BOND PROCEEDS - COMMITTED PROJECTS**

PROJECT CODE	PROJECT DESCRIPTION	TOTAL ESTIMATED COST		OTHER FUNDING SOURCES		NOTES / COMMENTS
		BOND FUNDS ALLOCATED	STATUS	POTENTIAL PROJECTS	POTENTIAL REVENUE SOURCE	
A						
A.1	CENTER FOR THE ARTS PROPERTY ACQUISITION (GLICK)	\$ 453,711	Completed	\$ -	Lease Payments	TBD
A.1.1	CENTER FOR THE ARTS PROPERTY IMPROVEMENTS	\$ 250,000	not started		N/A	Per Board approval: May 27, 2008 and Lease August 1, 2009
A.2	EHLINE PROPERTY ACQUISITION	\$ 3,680,169	Completed	\$ -	Purchase/Sale Agreement	\$ 1,009,000 Proceeds from Sale to State of CA
A.3	SAN GORGONIO INN PROPERTY ACQUISITION	\$ 1,820,544	Completed	\$ -	Potential resale	TBD Banning Town Center Redevelopment Project
A.4	SCHARFF ACQUISITION (40 ACRES) PROPERTY ACQUISITION	\$ 2,854,550	Completed	\$ -	N/A	N/A TBD: Light Industrial Development Site Former Drag City Site
A.5	BANNING AIRPORT ASSOC. PROPERTY ACQUISITION	\$ 430,798	Completed	\$ -	Purchase/Sale Agreement	\$ 431,298 Utility Dept to Reimburse CRA - Purchased for Energy Plant
A.6	WEST COAST ELECTRIC PROPERTY ACQUISITION	\$ 601,018	Completed	\$ -	Potential resale	TBD Banning Town Center Redevelopment Project
A.7	ALL STAR DODGE FACILITY RAMSEY 2301 W	\$ 1,200,000	Completed	\$ 800,000	Potential resale	TBD \$1.2 is total purchase price; upfront funds of \$182,393 (deposit and other costs); note of \$1,020,000 to be paid over 7 years - \$7,307.60 per month
A.8	CITY HALL / BENHAR (SUPER SUBS) PARKING LOT IMPROVEMENTS	\$ 495,237	Completed	\$ -	N/A	N/A Completed
A.9	DESIGN & CONSTRUCTION STORM DRAIN LINE D & OTHER IMPS (JUSTICE CENTER)	\$ 2,012,176	Active	\$ -	N/A	N/A Est. Completion Oct '09
A.10	*AIRPORT MASTER PLAN FBO	\$ 250,000	Appropriation Needed	\$ -	N/A	N/A RFQ/RFP 09-10 (No encumbrances)
A.11	FAÇADE APPROVALS (4)	\$ 545,710	Active	\$ -	N/A	N/A Owner Grant Agreements 9/09
A.12	FOX THEATER (OPA)	\$ 1,363,348	Active	\$ -	N/A	N/A Work Underway
A.13	SAN GORGONIO INN SITE PREPARATION FOR DISPOSITION	\$ 0	TBD	\$ 350,000	N/A	N/A Asbestos Abatement Remove UST and Soil Remediation and Site Preparation
A.14	SAN GORGONIO INN DEVELOPER ASSISTANCE & OTHER COSTS	\$ 0	TBD	TBD	N/A	N/A

**TOTAL**      \$ 15,957,261      \$ 1,160,000      \$ 1,440,298

**2007 CRA BOND PROCEEDS - PLANNED PROJECTS**

PROJECT CODE	PROJECT DESCRIPTION	TOTAL ESTIMATED COST			OTHER FUNDING SOURCES		NOTES / COMMENTS
		BOND FUNDS ALLOCATED	STATUS	POTENTIAL PROJECTS	POTENTIAL REVENUE SOURCE	AMOUNT	
B.1	FACADES & OPA'S (FUNDS REMAINING FROM \$2,500,000 ALLOCATION)	\$ 290,942	Active	\$	N/A	N/A	\$1.9 M Committed as of 7-09, Need A/C Park-Additional Parking Lot Project Cost Estimate
B.1.1	ART ALLEY in B.1 HAS EXPANDED SCOPE TO INCLUDE COMMON AREA PARKING CONSTRUCTION AND UTILITY WORK	\$ 300,000	In Design		N/A	N/A	
B.2	MT SAN JACINTO COLLEGE SITE PREPARATION	\$ 750,000	Active		N/A	N/A	Community College Site Development
B.3	RAMSEY STREET IMPROVEMENTS: GRAND VIEW TO APEX	\$	TBD	TBD	N/A	N/A	TBD: Improvements and right-of-way acquisition required
B.3.1	BEAVER MEDICAL TURN POCKET	\$	TBD	\$ 250,000	N/A	N/A	
B.3.2	NORTH SIDE OF APEX AND RAMSEY ST.	\$	TBD	\$ 200,000	N/A	N/A	
B.4	HARGRAVE/RAMSEY STREET INTERSECTION IMPROVEMENTS (SOLAMAIN PLAZA)	\$	TBD	\$ 1,500,000	N/A	N/A	Readiness of Private Development Uncertain (No encumbrances)
B.5	PASEO SAN GORGONIO IMPLEMENTATION	\$	TBD	\$ 250,000	N/A	N/A	TBD
B.8	EAST RAMSEY STREET IMPROVEMENTS	\$	TBD	\$ 275,000	N/A	N/A	TBD
B.7	ADDITIONAL FUNDING FOR FAÇADE PROGRAM	\$	TBD	\$ 700,000	N/A	N/A	Original \$2.5 million allocation almost fully committed - see project B.1 for status.
B.8	SUNSET PLAZA - RAMSEY AND SUNSET	\$	TBD	\$ 550,000	N/A	N/A	
B.9	POTENTIAL PROPERTY ACQUISITIONS	\$	TBD	\$ 1,925,000	N/A	N/A	To be discussed in a future closed session
<b>TOTAL</b>		<b>\$ 1,340,942</b>		<b>\$ 5,650,000</b>		<b>\$ -</b>	

**2007 CRA BOND PROCEEDS - POTENTIAL PROJECTS**

PROJECT CODE	PROJECT DESCRIPTION	TOTAL ESTIMATED COST			OTHER FUNDING SOURCES			NOTES / COMMENTS
		BOND FUNDS ALLOCATED	STATUS	POTENTIAL PROJECTS	POTENTIAL REVENUE SOURCE	AMOUNT		
C.1	ROOSEVELT WILLIAMS PARK	\$ -	TBD	\$ 1,500,000	N/A	N/A	TBD	
C.2	RAMSEY STREET BEAUTIFICATION	\$ -	TBD	\$ 500,000	N/A	N/A	TBD	
C.3	8TH & LINCOLN STREET STREET REHABILITATION	\$ -	TBD	\$ 500,000	N/A	N/A	Pending Status of Barning Business Center	
C.4	8TH STREET & I-10 INTERCHANGE SIGNALIZATION	\$ -	TBD	\$ 500,000	N/A	N/A	Pending Status of Barning Business Center	
C.5	I-10 & 8TH STREET INTERCHANGE	\$ -	TBD	\$ 1,500,000	N/A	N/A		
C.6	ALMOND WAY STREET IMPROVEMENTS (NICOLET TO INDIAN SCHOOL LANE)	\$ -	TBD	\$ 1,040,000	N/A	N/A	TBD	
C.7	INLAND BEHAVIORAL HEALTH CLINIC - EAST RAMSEY	\$ -	TBD	TBD	N/A	N/A		
C.8	PADDY O'REILLYS - FAÇADE AND EASEMENT	\$ -	TBD	TBD	N/A	N/A		
C.9	8TH AND LINCOLN DEVELOPMENT	\$ -	TBD	TBD	N/A	N/A		
C.10	MESSENGER 60 ACRES	\$ -	TBD	TBD	N/A	N/A		
C.11	INFRASTRUCTURE TO SUPPORT BUS PARK ON EAST END	\$ -	TBD	TBD	N/A	N/A		
<b>TOTAL</b>		<b>\$ -</b>		<b>\$ 5,590,000</b>		<b>\$ -</b>		

## 2007 CRA BOND PROCEEDS - SUMMARY

### BOND PROCEEDS AVAILABLE

BOND PROCEEDS	\$ 24,940,342
INTEREST EARNINGS TO DATE	\$ 1,425,318
	<u>\$ 26,365,660</u>

### BOND FUNDS ALLOCATED

TOTAL COMMITTED PROJECTS	\$ 17,107,261
TOTAL PLANNED PROJECTS	\$ 6,990,942
	<u>\$ 24,098,203</u>

### BOND FUNDS REMAINING

TOTAL BOND PROCEEDS	\$ 26,365,660
LESS: TOTAL BOND FUNDS ALLOCATED	\$ 24,098,203
	<u>\$ 2,267,457</u>

### OTHER PROJECTS (1)

POTENTIAL PROJECTS	\$ 5,590,000
	<u>\$ 5,590,000</u>

### POTENTIAL REVENUE

COMMITTED PROJECTS	<u>\$ 1,440,298</u>
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### FUNDING AVAILABLE FOR FUTURE PROJECTS

BOND FUNDS REMAINING (SEE ABOVE)	\$ 2,267,457
POTENTIAL REVENUE (SEE ABOVE)	\$ 1,440,298
	<u>\$ 3,707,755</u>

(1) No funding for this category has been formally set aside or approved by the CRA Board.



### HISTORIC EMPLOYEE/STAFFING TABLE

Position	Date of Hire	Termination Date	Notes
<b>City Manager /Executive Director</b>			
Andrew Takata	2/15/09	Current	
Sam Racadio	8/3/09	2/16/09	Interim
Brian Nakamura	2/4/08	8/6/09	
Randall Anstine	7/14/03	8/7/08	
<b>Finance Director</b>			
Kirby Warner	9/29/09	Current	Interim
Bonnie Johnson	8/18/03	10/01/09	
<b>Community Development Director</b>			
Zai Abu Bakar	7/1/09	Current	Director
Mathew Bassi	10/30/08	3/31/09	Interim
George Hansen	8/18/08	4/20/09	Director
Mathew Bassi	4/3/08	8/18/08	Interim
Oscar Orci	12/8/04	3/14/08	Director
Nicole Criste	8/1/04	12/1/04	Consultant/ Interim CDD
Roger Derda	1/18/98	7/1/05	Director
<b>Redevelopment Director/Manager</b>			
John Jansons	10/28/08	Current	Manager
Judith Von Klug	11/5/07	5/1/08	Consultant
Judith Von Klug	8/21/06	11/2/07	Director
Henry Hesling	7/12/04	9/27/06	Consultant
*Vickie Burt	8/16/99	9/10/04	ED Director
Urban Futures Inc was hired in 2009 to assist the Agency with specific projects analysis and advisory services. UFI has previously assisted the Agency for many years on an as-needed basis.			
<b>Redevelopment Project Coordinator</b>			
Karl Dirk Voss	2/24/10	Current	Incumbent
April Calhoun	9/20/04	10/2/07	
<b>Other CRA Staff</b>			
Danielle Savard	7/2/07	Current	Executive Secretary
Maria Pritchard	12/9/02	6/30/06	Development Assistant
<b>Economic Development</b>			
Diane Wirth	12/08/09	Current	Consultant
Diane Wirth	4/1/07	1/23/09	Consultant
*Vickie Burt	8/16/99	9/10/04	ED Director



**COMMUNITY REDEVELOPMENT AGENCY MEETING  
DIRECTOR'S REPORT**

**DATE:** February 13, 2007  
**TO:** Community Redevelopment Agency Board  
**FROM:** Judith Von Klug, Redevelopment Director  
**SUBJECT:** Proposed Clarifications and Changes to the Commercial Façade Improvement Program

**RECOMMENDATION:** That the Agency approve proposed clarifications and changes to the Commercial Façade Improvement Program.

**JUSTIFICATION:** The Commercial Façade Improvement Program is an important tool for the beautification of the Ramsey Street corridor and the greater downtown area. It was initiated in 2006 and as it has been implemented, the need for clarification and revision has become evident.

**BACKGROUND:** The current Commercial Façade Improvement Project is an off-shoot of the former East Ramsey commercial façade program. That original program provided \$7,500 for exterior improvements, including general maintenance, on a matching-fund basis. The new program eliminated the matching fund provision and increased the amount available for exterior improvements to \$100,000. While this effectively changed the emphasis of the program from cleaning up property to extensively remodeling property, the program guidelines were not revised accordingly.

Staff would like to align the rules pertaining to the program with the new intent of the program. A list of issues was formulated and reviewed with the Economic Development Committee. The following discusses each of these issues and the associated recommendations.

**Application Period** – Staff recommends two three-month application periods each year.

Applications are currently taken on an on-going basis and \$600,000 is allocated annually for the program. Staff would like to open applications twice a year, allocating half of the budgeted amount to each semester. If there are unencumbered funds after the first application period, those funds can be rolled over into the second application period. This will allow the Agency to weigh one proposal against another if there is not enough money to fund all applications in any given period.

Staff recommends accepting applications during January, February, and March and taking those applications to the Agency in May for approval. The extra time is allocated for design review. The second submission period would be July through September with



action by the Agency in November. The Economic Development Committee concurred with the establishment of specific application periods for this program.

General Eligibility – Staff recommends that all property owners within the program boundaries remain eligible for the program.

The program currently does not distinguish between owner-operators and investors, i.e. someone who owns the building but leases it to others. One concern in this regard is that there are provisions for Agency reimbursement if someone sells the property with the assumption that the remodeling has increased the value of the real estate. However, there is no provision for an investment owner who may increase a tenant's rent as a result of the remodel. Another concern is that owner-operators have a greater personal stake in the area and should be given priority over an investor.

Staff recommends leaving the program open to any owner of commercial property and the Economic Development Committee supports this recommendation.

Program Boundaries – Staff recommends the core downtown area as the first priority for funding, expanded downtown as the second priority, and the remainder of Ramsey Street and San Geronio Avenue as also potentially eligible.

The materials on the current program say that it applies to buildings on Ramsey Street or buildings visible from the I-10 freeway. Staff has two concerns about these boundaries. First, it excludes properties in the greater downtown area, for example on 1<sup>st</sup> Street or San Geronio Avenue. Second, by including all of Ramsey Street, while there is improvement to an individual building, there is only minor impact on the greater neighborhood. Conversely clustering remodeled buildings will be more likely to affect a material change in the targeted area overall.

Staff originally recommended limiting funds to the greater downtown area without having any priority tiers. While the Economic Development Committee agreed with staff's concerns, it also did not want to see money unused if owners in the targeted area did not apply for the funds. The Committee suggested giving applications in the downtown area first priority. This would be the area bounded by Livingston Street, Williams Street, 4<sup>th</sup> Street, and Martin Street. If there are funds left over, the Committee recommends that the next priority be Ramsey Street between 8<sup>th</sup> Street and Hargrave Street. Finally, if there are still available funds, the Committee recommends funding all of Ramsey Street, properties visible from the freeway, and properties on San Geronio Avenue from the freeway to Wilson Street. Staff is comfortable with this ranking but would only fund projects outside of the area from 8<sup>th</sup> Street to Hargrave Street during the second funding cycle of each fiscal year (January through March).

Matching Funds – Staff recommends owner funding of architectural and permit fees.

The program currently does not require matching funds, although there is apparently some confusion in this regard. An owner must pay for architectural and permitting fees

up front, before action is taken on the grant but the documents do imply that these expenses can be included in the list of reimbursable costs after the grant is approved and a permit for the work is pulled.

The Economic Development Committee recommends reimbursement of all expenses including design and permit fees with no requirement for matching funds. Staff understands that lack of funds may be one reason why a building is in need of a facelift. However, there are financial obligations to owning real property and staff is also very concerned that over time property owners and businesses will come to expect that the Agency will take care of their property for them.

Therefore, staff does believe that there needs to be reasonable limits to this program that uses public money for a public purpose and does recommend that an owner be required to pay for quality architectural design work and permit fees themselves. This includes the cost for drawings and renderings and work with staff on improving the design if the original submission is inadequate.

Supplemental Loan Funds – Staff recommends limiting the commercial façade program to grants of \$100,000.

The existing Commercial Façade Improvement Program states that if the cost of a remodel will exceed \$100,000, the owner can ask the Agency for a loan for the balance needed. Staff does not have a problem with this in concept but believes the appropriate vehicle for a larger project is through an Owner Participation Agreement rather than the commercial façade contract.

Use of Funds – Staff recommends that funds should primarily be related to changing and improving the cosmetic appearance of a commercial building.

The original East Ramsey program materials said specifically that funds could be used for general maintenance, code enforcement items, and earthquake retrofitting. However, when the program was changed and funding was increased to \$100,000, staff believes it was done with the intent that the commercial buildings involved would receive a major facelift, not simply be repainted or reroofed. The latter basically rewards property owners who have deferred their maintenance. Staff recommends that the program materials be changed to state that all funded work needs to significantly enhance the visual quality of the exterior of the building beyond that achieved by routine maintenance. This is also the recommendation of the Economic Development Committee.

Onsite Improvements – Staff recommends that onsite improvements be funded only in conjunction with significant building improvements.

While this program is labeled as a façade improvement program, staff has received several applications asking for most or all of the funds to pay for site improvements as opposed to building improvements. While staff understands that site improvements can

also make a significant visual improvement to a property, the focus of this particular program should remain the remodeling of existing structures.

The Economic Development Committee recommends that no more than 30 percent of the grant funds be used for onsite improvements. Staff prefers to avoid a set percentage and instead clarify that each project must include a substantial renovation of the building façade.

New Construction including Additions – Staff continues to recommend that additions not be eligible for a façade improvement grant.

At the last Agency meeting an application by Ramsey Burger was discussed. The property owner was applying for grant money for a project that includes an 11-foot by 22-foot addition to the front of the Ramsey Burger building that would add an indoor dining room and customer restroom to the facility. The Agency indicated a willingness to fund some prorated amount of the addition if the quality of the overall design was improved.

Staff would therefore consider Ramsey Burger “grandfathered in” under the existing program and continues to recommend that new construction of any type, whether it be an addition or a complete new building, not be eligible for this program. The Economic Development Committee recommends determining the cost of replacing the old façade with the new façade and paying that amount toward the construction cost of an addition to an existing building, which is consistent with the Agency’s direction from the last meeting.

Staff’s concern continues to be that Banning is an older community with many needs. The Agency simply cannot afford to be all things to all people so it needs to identify the most pressing needs that affect the entire community and focus its resources on those needs. An addition to a property has an economic benefit to the owner and the business beyond the improvement of the appearance of the building. In staff’s opinion, that economic benefit tips the scales from public benefit to private benefit and such projects should not receive funding under this program.

Use of the Property – Staff recommends that property occupied by nonconforming uses be ineligible for funding. Nonprofit uses should only be funded if related to art and/or culture.

The current program guidelines state that commercial properties are eligible to apply. There is no discussion about non-conforming uses or nonprofit activities. The Economic Development Committee suggested that nonconforming uses and nonprofit uses should be eligible for grants to \$25,000 to permit some improvement of their premises, which would be beneficial to the surrounding area regardless of the use. The Committee also suggested that the Agency retain the discretion to fund a higher amount for uses considered consistent with art and culture.

Staff believes that withholding funding for nonconforming uses can be an incentive to a property owner to change the use of the building in order to get the grant. Nonconforming uses should not be encouraged. Nonprofit uses tend not to be commercial activities, but those tied to art and culture do help strengthen Banning's reputation as a center for such activities, which is a major objective of the Agency.

Liens – Staff recommends that the Agency maintain a lien against the real property improved with a commercial façade grant for a period of five years.

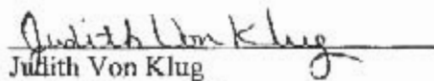
Under the East Ramsey Street program, the Agency placed a lien on the real estate for the amount of the improvement grant for a period of three years. If the property was sold during that time, the Agency was repaid. This helped ensure that an owner did not use a grant to improve the value of the real estate for resale and receive personal benefit in doing so. Staff and the Economic Development Committee agree that the term of this lien should be extended to five years. The other option considered was extending the lien to seven years but having a sliding payoff schedule. For example, maybe 25% of the lien would be forgiven after three years, another 25% after five years, and the balance after seven years.

Summary

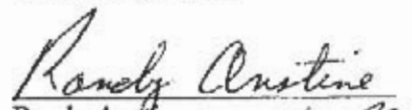
Staff believes that it is important to clarify that the purpose of the Commercial Façade Improvement Program is to improve the appearance of commercial buildings in key public areas in accordance with the adopted Commercial Corridor Design Standards. Adoption of these recommendations will provide clarity to staff and public considering applications for funds.

**FISCAL DATA:** There is no fiscal impact to the Commercial Façade Improvement Program as a result of these decisions. The issues discussed are operational in nature.

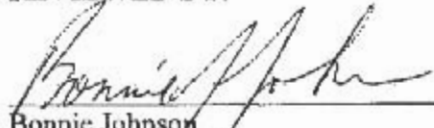
**RECOMMENDED BY:**

  
Judith Von Klug  
Redevelopment Director

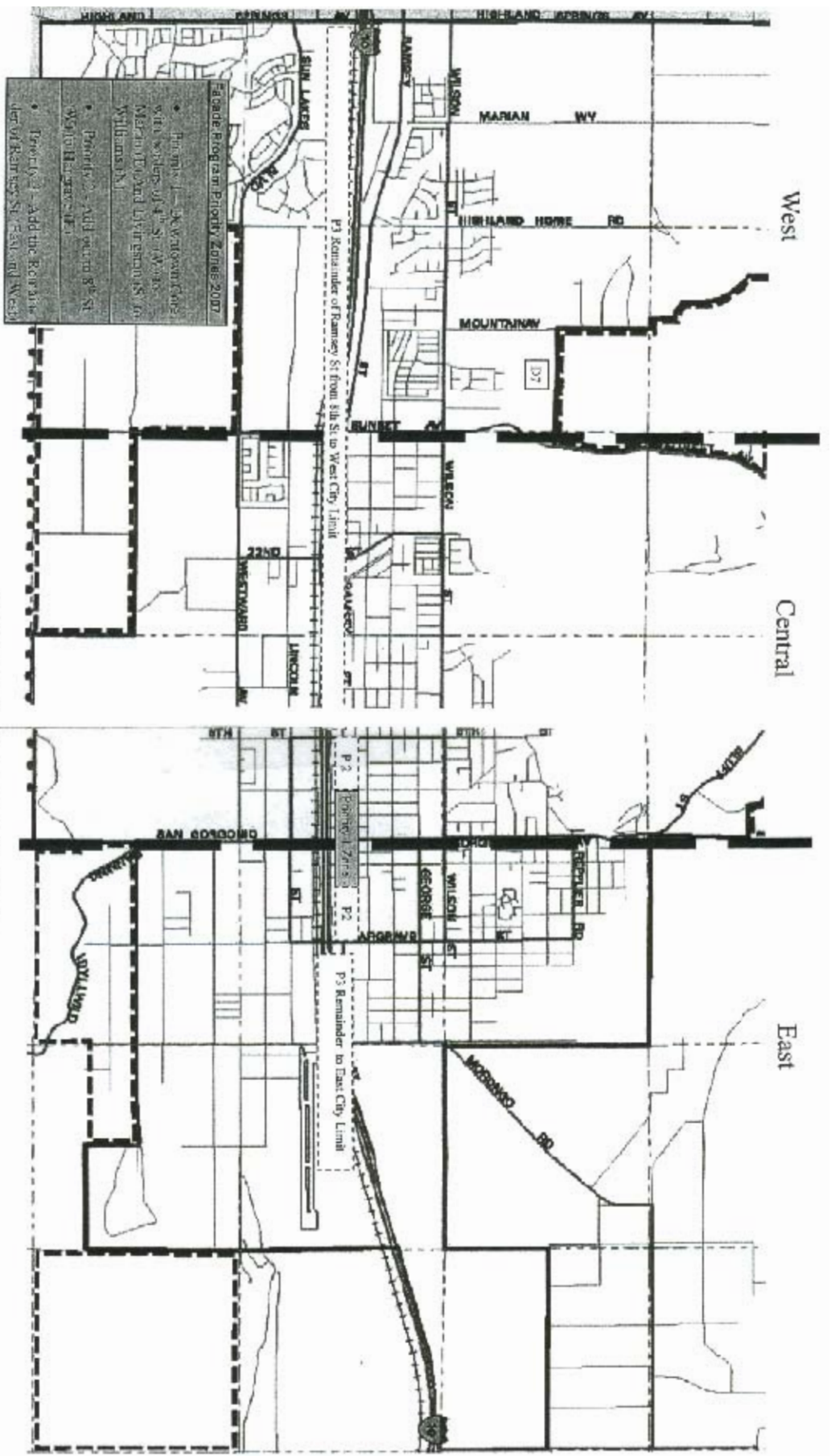
**APPROVED BY:**

  
Randy Anstine  
Executive Director *by BJ*

**REVIEWED BY:**

  
Bonnie Johnson  
Finance Director





**Facade Program Priority Zones 2007**

- Priority 1 - The downtown core with slopes of 4<sup>th</sup> St. to Wilson, Main to Third and Livingston St. to Williams St.
- Priority 2 - Add onto 8<sup>th</sup> St. West of Highland Ave.
- Priority 3 - Add the Remainder of Ramsey St. from West and West

P1 Remainder of Ramsey St from 8th St to West City Limit

P2 Priority Zones

P3 Remainder to East City Limit

**Banning Rd**  
**Development Agency**  
**Facade**  
**Priority Zones**  
**2009**



**COMMUNITY REDEVELOPMENT AGENCY MEETING  
REPORTS OF OFFICERS**

**DATE:** May 29, 2007  
**TO:** Community Redevelopment Agency Board  
**FROM:** Judith Von Klug, Redevelopment Director  
**SUBJECT:** Review of Applications for Commercial Façade Improvement Grants

**RECOMMENDATION:** That the Agency give direction regarding pending applications for commercial façade improvement grants.

**JUSTIFICATION:** The purpose of the commercial façade improvement program is to enhance the exterior appearance of the Ramsey Street commercial corridor and particularly the downtown area. Grants recommended for fund set-aside per the staff discussion below support this goal.

**BACKGROUND:** The following lists each pending application for a commercial façade improvement grant. In most cases the application is not ready for final approval. However, many of the applications will not be recommended for approval for various reasons and staff does not wish to require the applicant to do additional work on the application when it may be denied anyway. Therefore, while not consistent with the Agency's standard procedure, staff is asking for a preliminary review of the thirteen pending applications and either deny the application or direct staff to set-aside funds for the application and work with the applicant to complete the approval process for final Agency authorization.

Per the funding implications below, the Agency has \$400,000 for grants in the current fiscal year and \$600,000 more next fiscal year. Grants are generally limited to \$100,000. However, staff has received two applications from buildings located at key downtown intersections that exceed that allotment. This is primarily due to the fact that these buildings have two major facades exposed along public streets and both buildings are larger than the average building downtown. A third application in this category needs improvement on its design and this can be accomplished with additional funds, Staff is therefore recommending that the Agency basically fund the equivalent of two grants for each of these three buildings and consider this approach for other properties in similar circumstances. These buildings are noted below.

Ramsey Burger 1901 W Ramsey	Need bids	Set-aside funds per previous Agency direction
Super Subs 112 N San Geronio	Application is complete	Approve grant



Coplin House 12 S San Gorgonio	Application is complete	Approve double grant due to exposure of all four sides of a major structure at a key downtown intersection
Elegant Affair 182 W Ramsey	Design needs improvement	Set-aside funds for a double grant while design is reworked
Tri-City Stationers 141 N San Gorgonio	Need bids	Set-aside funds (No picture attached)
Ben Stephenson Building 89 N San Gorgonio	Need cost breakout for building versus art park	Set-aside double grant due to exposure of all four sides of a major structure at a key downtown intersection

The above grants, if approved as proposed, encumber \$900,000 of the \$1,000,000 available for façade grants through the 07-08 fiscal year. All but Ramsey Burger are important buildings on Ramsey and/or San Gorgonio in the core of the downtown area. In addition to these applications, the Center for the Arts is working on an application for funding as is Paddy O'Reillys Grill and Pub; the Dorothy Ramon Learning Center has apparently purchased a downtown building for a new facility; and the Hendon Building has sold and is being repaired. Therefore, staff will be suggesting an augmentation of funds from the upcoming bond proceeds to continue with the renovation of downtown storefronts.

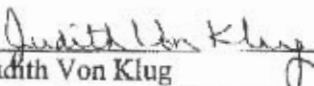
The following applications are not recommended for funding for a variety of reasons. However, none are located in the downtown area.

Desert Palms Cleaners 1529 W Ramsey	Need bid; have architect's estimate	Deny since it is not in the downtown Priority 1 zone
Beaumont Lawnmower 5731 W Ramsey	Need bids; project includes doubling the size of the existing building by expanding on two sides	Deny since it is not in the downtown Priority 1 zone; refer to staff to determine if other assistance may be appropriate
Banning Driveline 1540 E Ramsey	Cost estimate is incomplete and design needs work	Deny since it is not in the downtown Priority 1 zone
Banning Recycling 1233 E Ramsey		Deny; property has code violations and does not conform to existing zoning

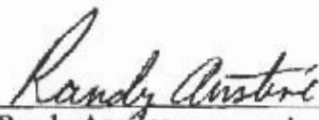
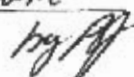
Stagecoach Manor and Barbershop 3705 W Ramsey	Needs bids and drawings updated	Deny since it is not in the downtown Priority 1 zone (Only picture of existing condition is attached)
Golden Meadows Assisted Living 3863 W Ramsey		Deny; project is fencing only; the property is not in the downtown Priority 1 zone; it is not a commercial property and it is nonconforming at its location (No picture attached)
Premium Insurance 1072 W Ramsey	Needs bid	Deny since it is not in the downtown Priority 1 zone; it appears that there may also be code enforcement issues

**FISCAL DATA:** A total of \$400,000 remains unencumbered in FY 2006-2007 Budget, CRA 2003 Tax Allocation Bonds Proceeds Fund for commercial façade improvement grants and an additional \$600,000 will be available on July 1, 2007, as part of the FY 2007-2008 Budget.

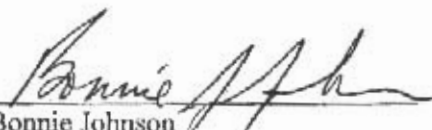
**RECOMMENDED BY:**

  
Judith Von Klug  
Redevelopment Director

**APPROVED BY:**

  
Randy Anstine  
Executive Director 

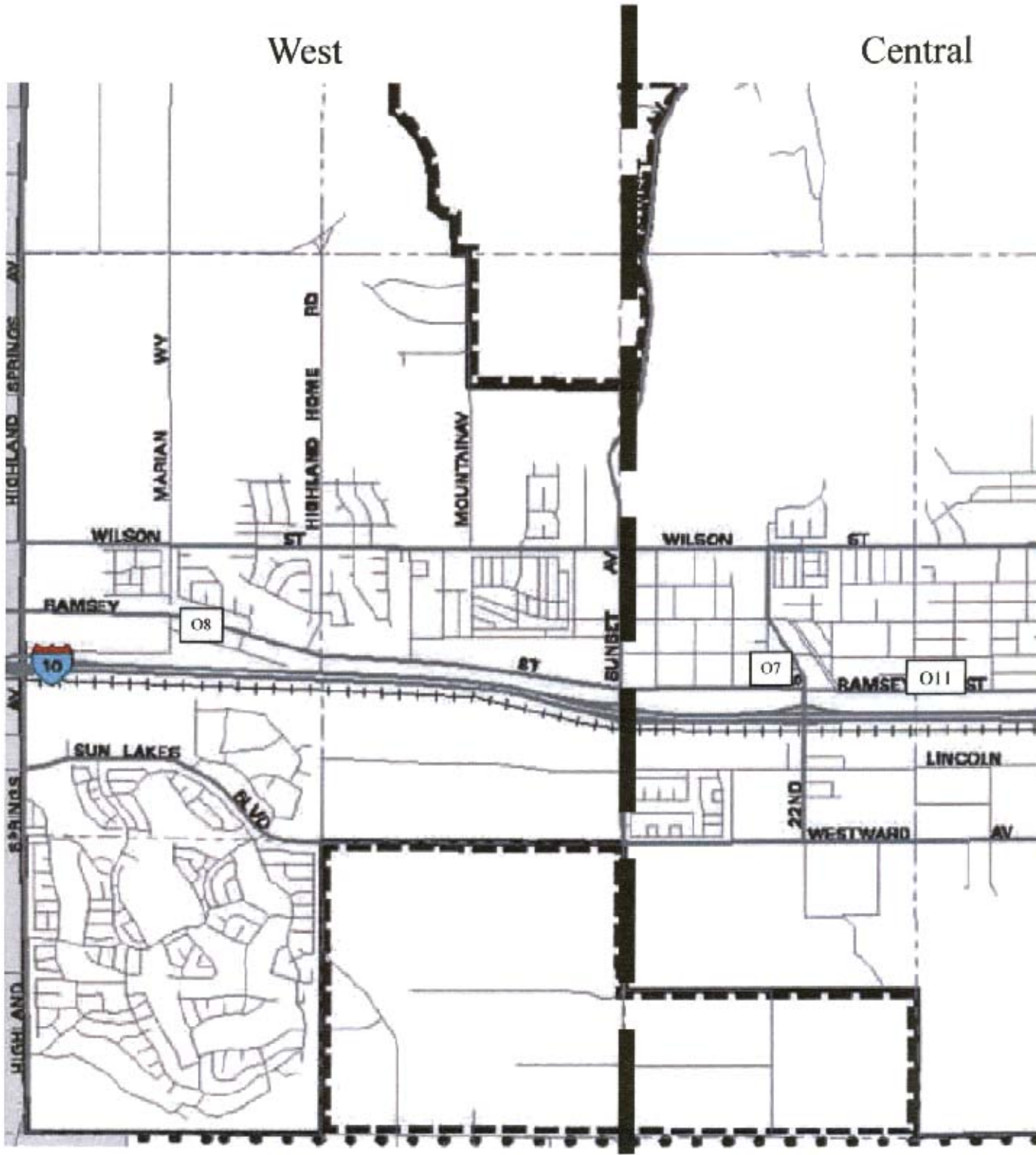
**REVIEWED BY:**

  
Bonnie Johnson  
Finance Director



West

Central

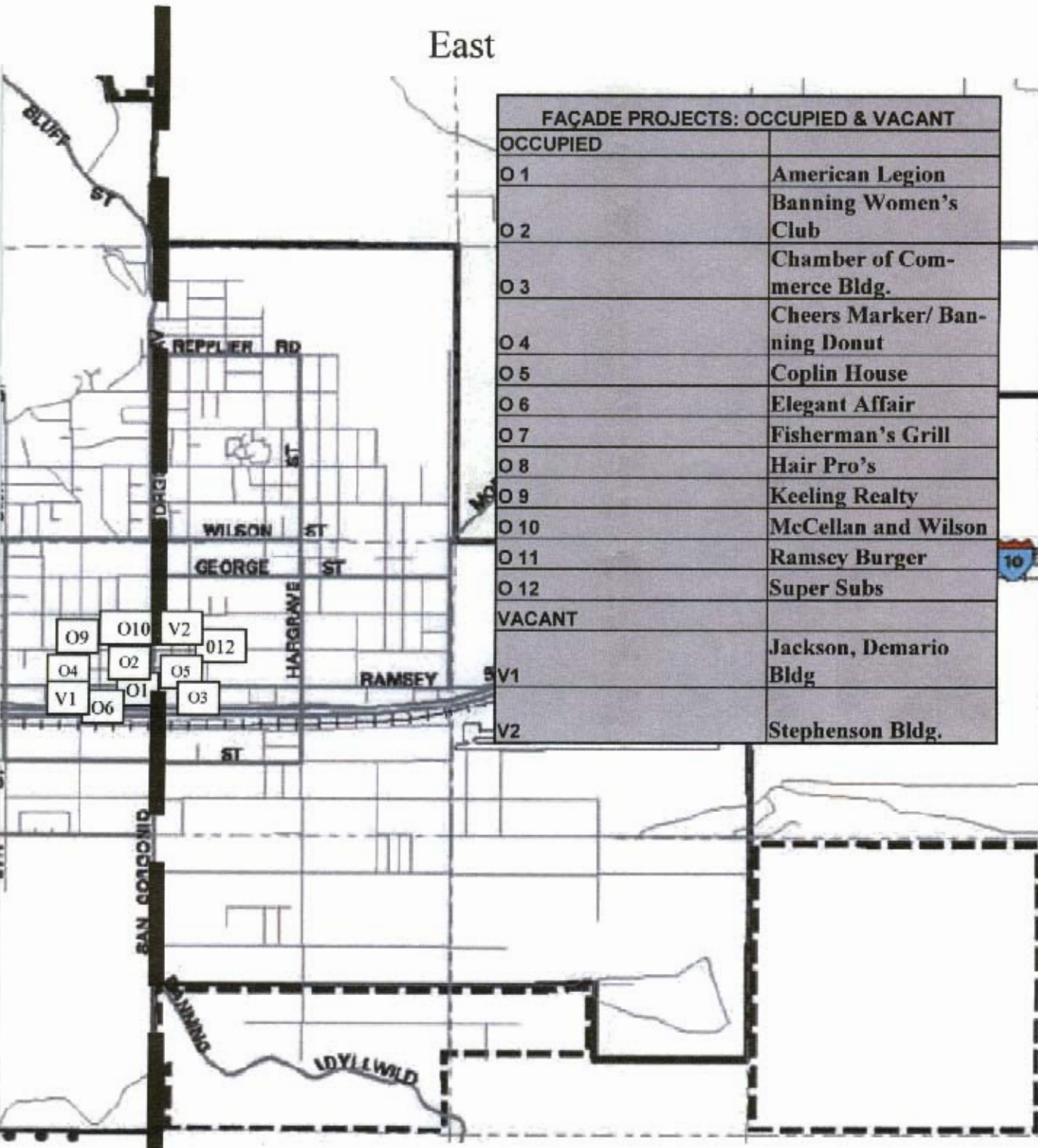


**Banning Red**

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(Occup

East

FAÇADE PROJECTS: OCCUPIED & VACANT	
<b>OCCUPIED</b>	
O 1	American Legion
O 2	Banning Women's Club
O 3	Chamber of Commerce Bldg.
O 4	Cheers Marker/ Banning Donut
O 5	Coplin House
O 6	Elegant Affair
O 7	Fisherman's Grill
O 8	Hair Pro's
O 9	Keeling Realty
O 10	McCellan and Wilson
O 11	Ramsey Burger
O 12	Super Subs
<b>VACANT</b>	
SV1	Jackson, Demario Bldg
V2	Stephenson Bldg.



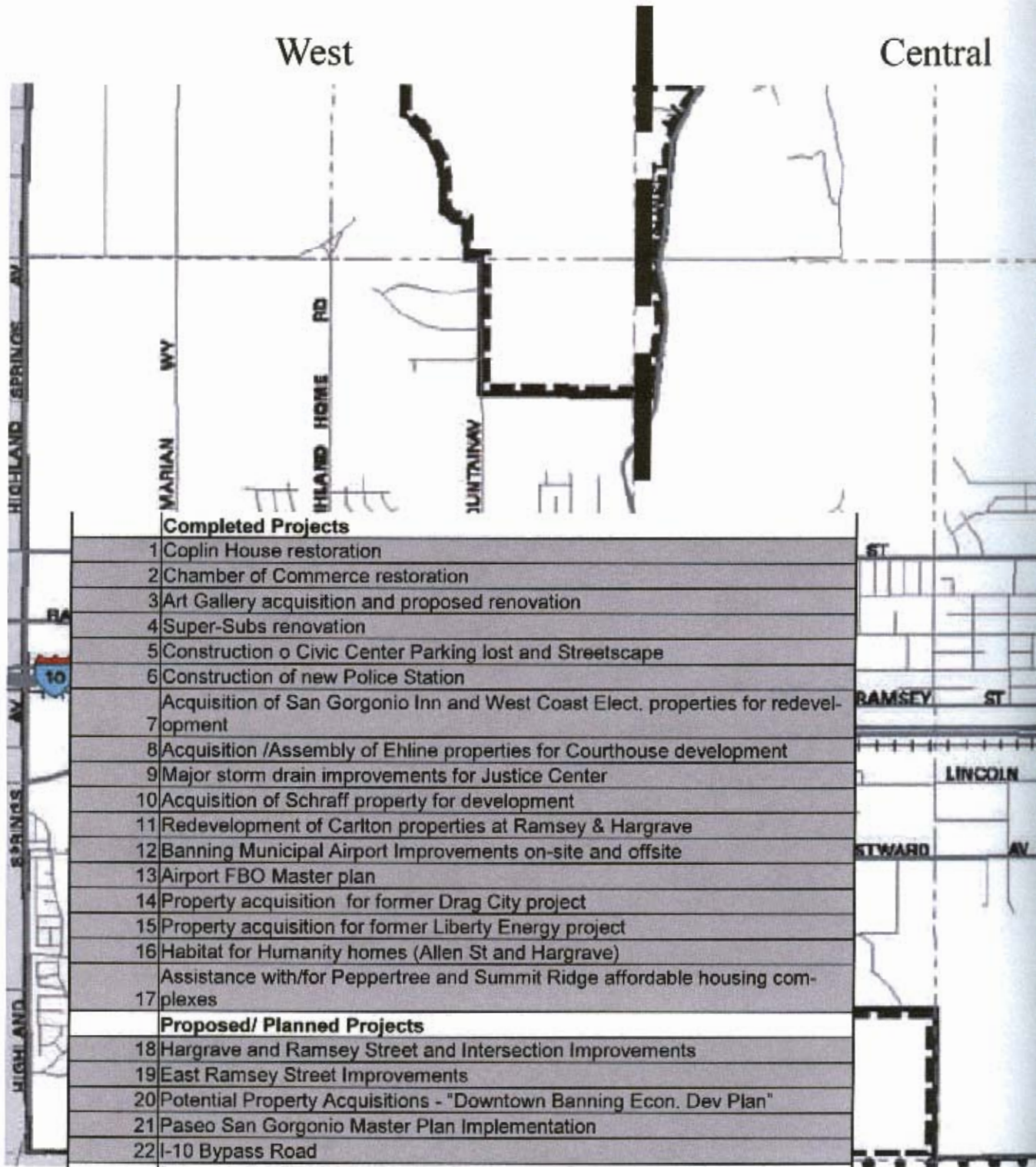
**Development Agency**

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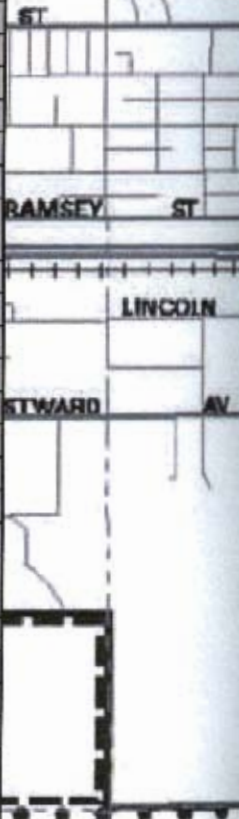


West

Central

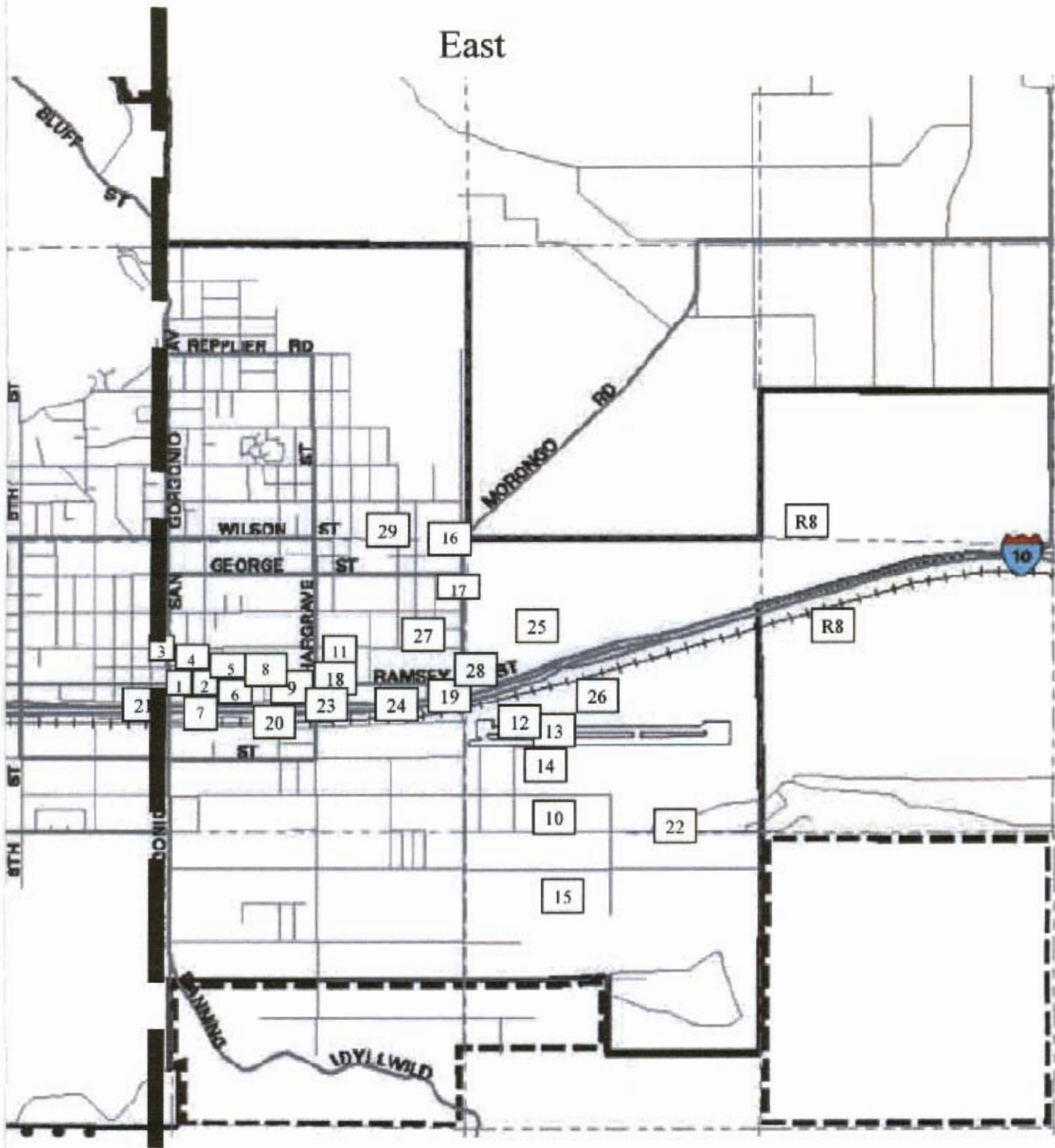


<b>Completed Projects</b>	
1	Coplin House restoration
2	Chamber of Commerce restoration
3	Art Gallery acquisition and proposed renovation
4	Super-Subs renovation
5	Construction of Civic Center Parking lot and Streetscape
6	Construction of new Police Station
7	Acquisition of San Geronio Inn and West Coast Elect. properties for redevelopment
8	Acquisition /Assembly of Ehline properties for Courthouse development
9	Major storm drain improvements for Justice Center
10	Acquisition of Schraff property for development
11	Redevelopment of Carlton properties at Ramsey & Hargrave
12	Banning Municipal Airport Improvements on-site and offsite
13	Airport FBO Master plan
14	Property acquisition for former Drag City project
15	Property acquisition for former Liberty Energy project
16	Habitat for Humanity homes (Allen St and Hargrave)
17	Assistance with/for Peppertree and Summit Ridge affordable housing complexes
<b>Proposed/ Planned Projects</b>	
18	Hargrave and Ramsey Street and Intersection Improvements
19	East Ramsey Street Improvements
20	Potential Property Acquisitions - "Downtown Banning Econ. Dev Plan"
21	Paseo San Geronio Master Plan Implementation
22	I-10 Bypass Road
<b>Privately funded Projects with City/Agency Technical Assistance.</b>	
23	Burgess Redevelopment at Ramsey and Hargrave
24	Inland Behavioral & Health Clinic
25	O'Donnel Business Park
26	Messenger 60 Acres
27	Almond Way Improvements ( Nicolet to Indian School Lane)
28	Ramsey St Beautification Project
29	Roosevelt Williams Park Improvements



**Banning R**  
Project

# East



## Development Agency

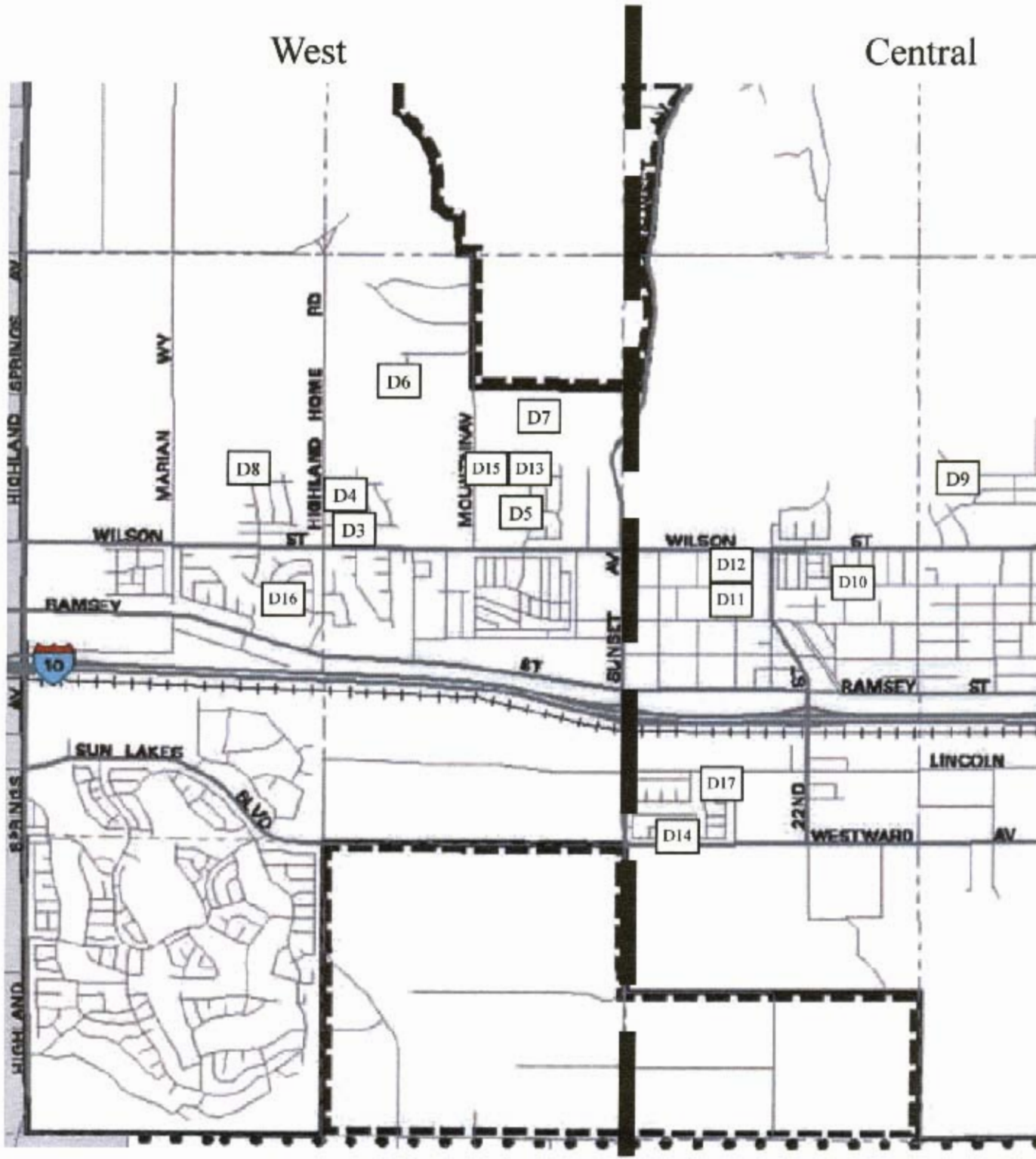
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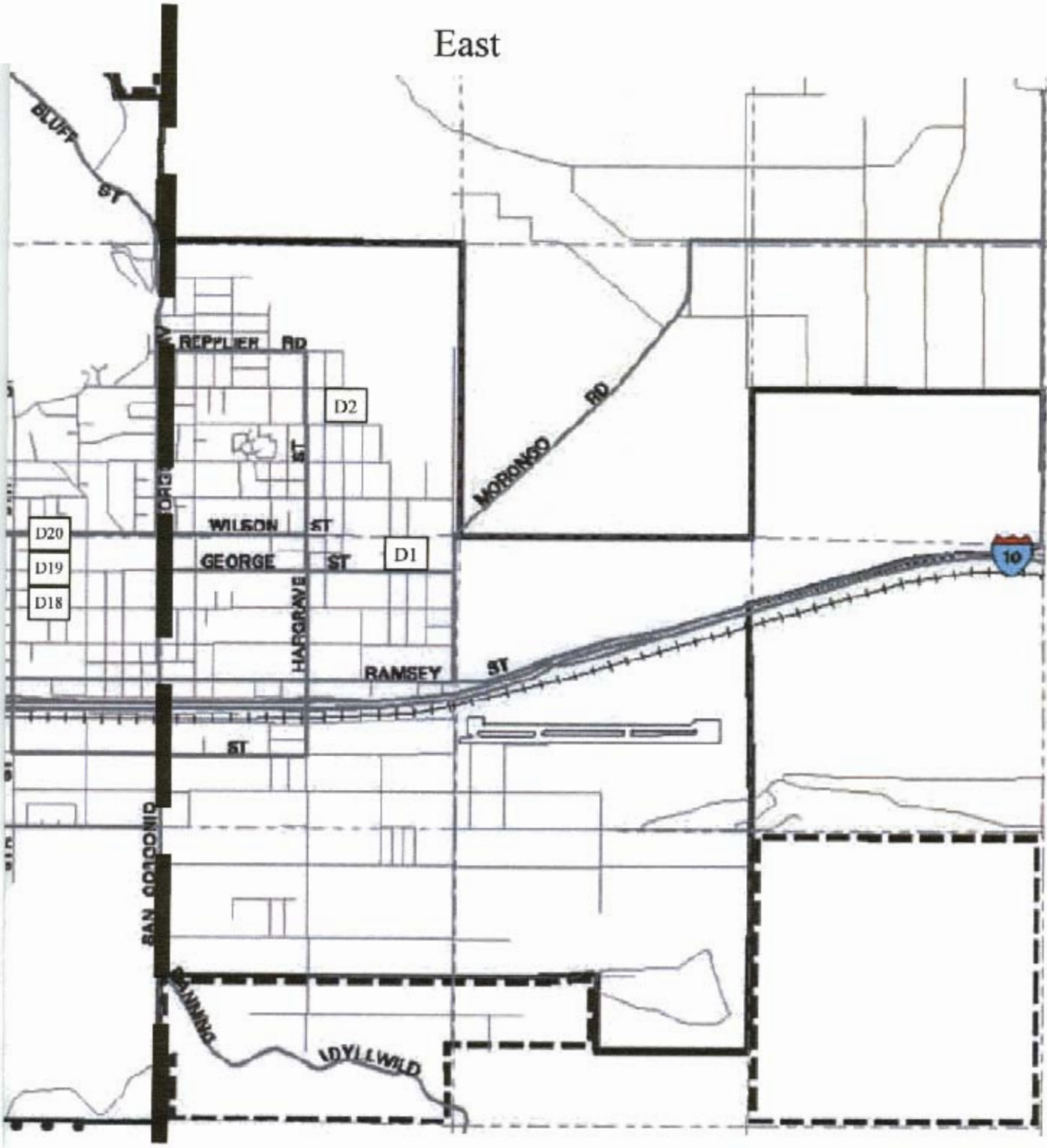




**Banning Rec**

First Tim  
(Down Pa

East



**Development Agency**

Home Buyers  
(Home Assistance)



**COMMUNITY REDEVELOPMENT AGENCY MEETING**

**DIRECTOR'S REPORT**

**DATE:** July 28, 2009  
**TO:** Community Redevelopment Agency Board  
**FROM:** Brian Nakamura, Executive Director  
**SUBJECT:** Approval of CRA Resolution No. 2009-18, Assignment Agreement to Acquire and Purchase Real Property located at 2301 West Ramsey Street Banning, CA (APN # 538-162-016-6).

**RECOMMENDATION:**

That the Agency approve CRA Resolution No. 2009-18 and authorize the Chairman to

- 1) Execute an Assignment Agreement approving the acquisition and purchase of real property located at 2301 West Ramsey Street in Banning, CA (APN # 538-162-016-6),
- 2) Escrow Instructions,
- 3) Purchase and Sale Agreement, and
- 4) Amendments to the Escrow Instructions, and
- 5) Authorize the Chairman to execute any and all other documents necessary to perfect the transaction, and

Authorize the Director of Finance to make necessary adjustments in the amount of \$1,020,000.00 to the Agency Budget to carry out the purchase of the Subject Property.

**JUSTIFICATION:**

Acquisition of property in the Project Area is an authorized activity of the Agency to alleviate blighting conditions and return blighted property into useful service at its highest and best use for the benefit of the community.

**BACKGROUND:**

In late June 2009, the Agency was presented with the opportunity to purchase real property located at 2301 West Ramsey Street, which had been vacated by All Star Dodge upon their closure in January 2009. (Attachment 2: Site Map)

At the direction of the Board, staff has negotiated an assignment of the right to purchase this property from a previously interested purchaser so as to maintain the agreed upon terms and price to the benefit of the Agency.

**DISCUSSION:**

This matter is being added to the Agency Agenda pursuant to Government Code Section 54954.2(b). Section 54954.2(b) states, "the legislative body may take action on items of business not appearing on the posted agenda".

Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted.

The reason this item is being added to the agenda, is because it was only on Thursday evening July 23, 2009 that the Agency had received the agreement with the seller's and assignor's signatures indicating an agreed upon transaction, which the Agency could then consider. As a result, this item needs to be considered for approval by the Agency to meet the desired closing date of July 31, 2009.

The attached resolution, CRA Resolution No. 2009-18 is necessary to document approval by the Board of real property acquisition by the Agency.

**The basic terms of the proposed agreement are as follows:**

- Purchase Price: \$1,020,000.00
- Down Payment: \$160,000.00
- Loan Term: 7 Years
- Interest rate: 6% (six percent)
- Monthly Payment: \$7,307.60
- Pay-Off: Remaining Loan Balance at end of Year 7.

During the due diligence period, and upon review of the subject property's title report, it was discovered that Covenants, Conditions and Restrictions (CC&R's) were recorded against the property. In this particular case, the "Restriction" was one that required the land, "to be used for residential purposes only", recorded February 25, 1946.

Given the odd nature of this restriction in light of the fact that the property has been in commercial service for perhaps as many as 50 years, it appears that this restriction is obsolete, inappropriate and unnecessary given the property's commercial character and past use. With that in mind, the Agency seeks to act pursuant to Health and Safety Code Section 33397, to remove this obsolete restriction by declaring it, "void and unenforceable".

Accordingly, the Agency has provided, "notice to all holders of interests in said covenant, to take notice that the Agency intends to declare this restriction void and unenforceable", by publishing a Public Notice pursuant to Health and Safety Code Section 33397.



**CONCLUSION:**

It is respectfully recommended that the Agency Board approve CRA Resolution No. 2009-18 and authorize the Chairman to:

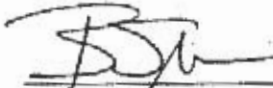
- 1) Execute an Assignment Agreement approving the acquisition and purchase of real property located at 2301 West Ramsey Street in Banning, CA (APN # 538-162-016-6)
- 2) Escrow Instructions,
- 3) Purchase and Sale Agreement, and
- 4) Amendments to the Escrow Instructions, and
- 5) Authorize the Chairman to execute any and all other documents necessary to perfect the transaction, and

Authorize the Director of Finance to make necessary adjustments in the amount of \$1,020,000.00 to the Agency Budget to carry out the purchase of the Subject Property.

**FISCAL DATA:**

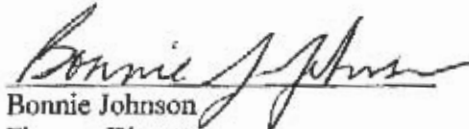
The requested amount can be paid from 2007 bond proceeds, Property Acquisition Account Number: 855-9500-490-90-02. The current approximately balance of this account before the recommended action is \$9,335,980. Should the recommended action be approved, the remaining bond funds for future projects after this acquisition would be approximately \$8,315,980.

**RECOMMENDED AND APPROVED BY:**



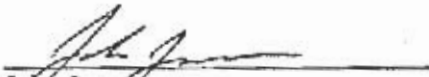
Brian Nakamura  
Executive Director

**REVIEWED BY:**



Bonnie Johnson  
Finance Director

**PREPARED BY:**



John Jansons  
Redevelopment Manager

**ATTACHMENTS:**

- 1) CRA Resolution No. 2009-18
- 2) Site Map

COMMUNITY REDEVELOPMENT AGENCY

RESOLUTION NO. 2009-18

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, CA APPROVING THE ACQUISITION OF REAL PROPERTY LOCATED AT 2301 WEST RAMSEY STREET, BANNING CA (APN# 538-162-016-6) BY APPROVING THE ASSIGNMENT, ASSUMPTION AND CONSENT TO ASSIGNMENT OF COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS IN THE AMOUNT OF \$1,020,000.00 FOR COMMERCIAL REDEVELOPMENT AND AUTHORIZE THE CHAIRMAN OF THE AGENCY TO EXECUTE ASSIGNMENT AGREEMENT AND AUTHORIZE THE FINANCE DIRECTOR TO MAKE NECESSARY BUDGET ADJUSTMENTS TO THE FISCAL YEAR 2009-2010 COMMUNITY REDEVELOPMENT AGENCY BUDGET TO PERFECT THE PURCHASE.

WHEREAS, the Agency is authorized to acquire real property to eliminate blight and for redevelopment purposes as authorized by Section 402 of the Redevelopment Plan, and

WHEREAS, the Agency seeks to acquire real property located at 2301 West Ramsey Street, Banning CA, (APN # 538-162-016-6), (the "Subject Property"), for commercial redevelopment purposes, and

WHEREAS, in order to maintain favorable price and terms for the acquisition of the Subject Property, the Agency wishes to execute an Assignment, Assumption and Consent to Assignment of Commercial Property Purchase Agreement and Joint Escrow Instructions to acquire the Subject Property, and

WHEREAS, the Community Redevelopment Agency Budget shall be amended in the amount of \$1,020,000 to accommodate the purchase of the Subject Property, and

WHEREAS, the acquisition of the Subject Property and adjustments to the Agency Budget must be approved by Resolution of the Agency Board.

NOW, THEREFORE, the Community Redevelopment Agency Board of the City of Banning California resolves as follows:

**Section 1: Finding.**

The above recitals are true and correct and are incorporated herein by reference.

**Section 2: Action.**

The Chairman of the Community Redevelopment Agency of the City of Banning,

is authorized to execute an Assignment Agreement approving the acquisition and purchase of the Subject Property, and the following:

- 1) Escrow Instructions,
- 2) Purchase and Sale Agreement, and
- 3) Amendments to the Escrow Instructions, and
- 4) Authorize the Chairman to execute any and all other documents necessary to perfect the transaction.

**Section 3: Further Action.**

Authorize the Director of Finance to make necessary adjustments in the amount of \$1,020,000.00 to the Agency Budget to carry out the purchase of the Subject Property.

**PASSED, APPROVED AND ADOPTED** this 28<sup>th</sup> Day of July, 2009.

\_\_\_\_\_  
Don R. Robinson, Chairman

APPROVED AS TO FORM AND  
LEGAL CONTENT:

\_\_\_\_\_  
Aleshire and Wynder  
Agency Counsel

ATTEST:

\_\_\_\_\_  
Marie A. Calderon, Secretary

CERTIFICATION

I, MARIE A. CALDERON, Secretary of the Community Redevelopment Agency of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009- \_\_\_\_ was duly adopted by the Community Redevelopment Agency Board of the City of Banning, California at a regular meeting thereof held on the 14th day of July, 2010, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

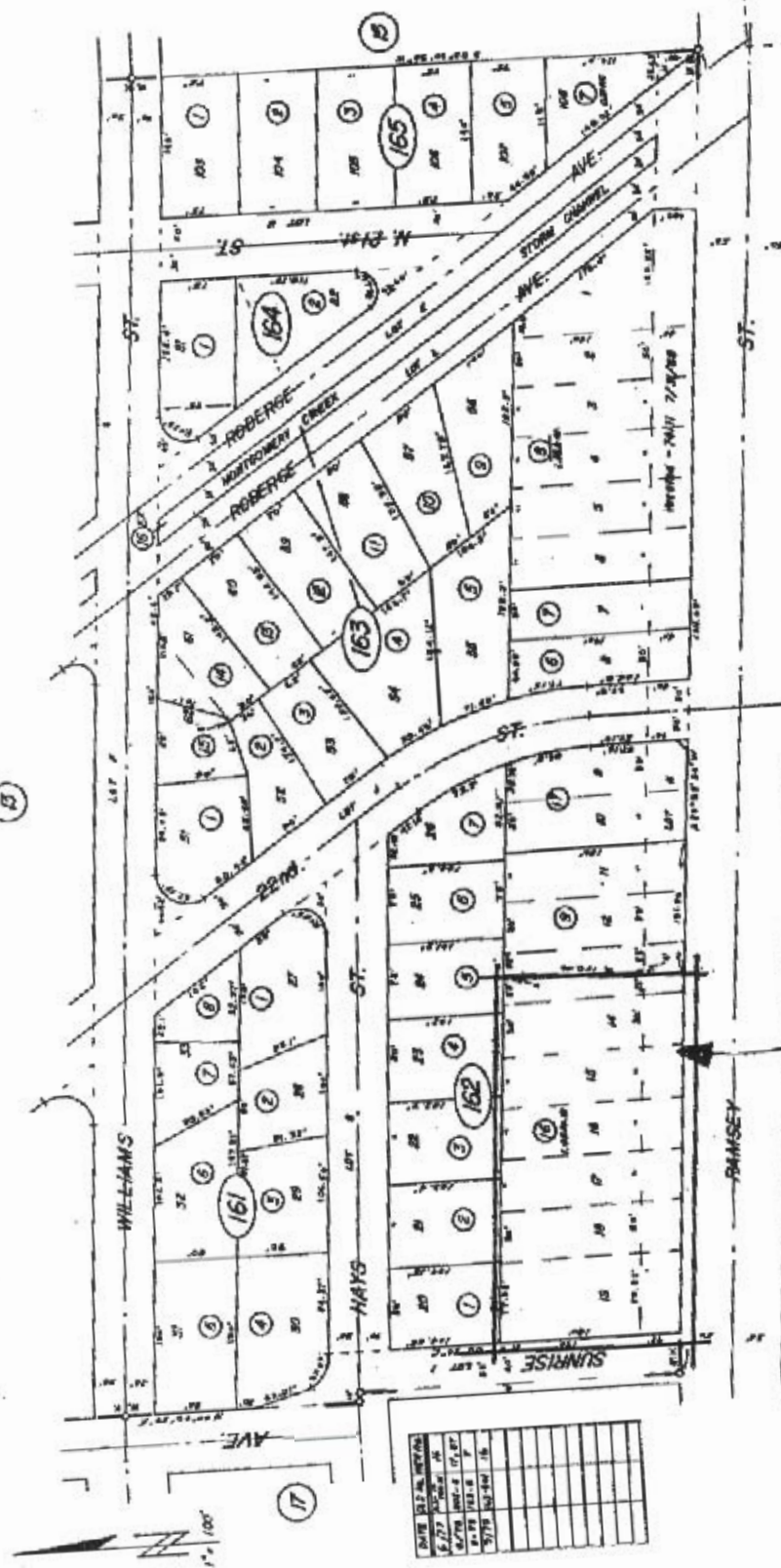
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Marie A. Calderon, Secretary  
Community Redevelopment Agency  
of the City of Banning

538-16

T.C.A. 100

POR. E1/2 SEC. 8, T.3S., R.1E.



DATE	BY	REVISION
5-27-70	W.S.	1
6-27-70	W.S.	2
8-17-70	W.S.	3
9-17-70	W.S.	4
10-17-70	W.S.	5
11-17-70	W.S.	6
12-17-70	W.S.	7
1-17-71	W.S.	8
2-17-71	W.S.	9
3-17-71	W.S.	10
4-17-71	W.S.	11
5-17-71	W.S.	12
6-17-71	W.S.	13
7-17-71	W.S.	14
8-17-71	W.S.	15
9-17-71	W.S.	16
10-17-71	W.S.	17
11-17-71	W.S.	18
12-17-71	W.S.	19
1-17-72	W.S.	20

M.B. 2070 Westhaven Village  
 D.W.C. N.E. 12/52  
 W.S.B./J.M.

SUBJECT

SEPTEMBER 1968

ASSESSOR'S MAP BK. 688 PG. 46  
 RIVERSIDE COUNTY, CALIF.

Recording Requested by and  
When Recorded Return to:

Banning Redevelopment Agency  
99 E. Ramsey Street  
Banning, California 92220  
Attn: Executive Director

---

(Space Above This Line for Recorder's Office Use Only)  
(Exempt from Recording Fees pursuant to Gov. Code § 27383)

**ASSIGNMENT, ASSUMPTION AND CONSENT TO  
ASSIGNMENT OF COMMERCIAL PROPERTY PURCHASE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

THIS ASSIGNMENT, ASSUMPTION AND CONSENT TO ASSIGNMENT OF COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("Assignment") is entered into as of this \_\_\_ day of July, 2009 ("Effective Date"), by and between Martin Coyne ("Assignor"), Patrick Michael and Shirley Mac De Zorzi, ("Seller") and Banning Redevelopment Agency ("Agency").

**RECITALS**

A. Seller and Assignor are parties to that certain Commercial Property Purchase Agreement and Escrow Instructions dated January 30, 2009 ("Agreement"). The Agreement provides for the sale of real property known as 2301 W. Ramsey Street, Banning, California 92220 ("Property") from Seller to Assignor.

B. Pursuant to Section 23 of the Agreement, Assignor (referred to as "Buyer" in the Agreement) may transfer the Agreement to another entity upon receipt of Seller's written consent. Assignor now wishes to transfer all of Assignor's rights and obligations under the Agreement to Agency and Assignor and Agency desire to obtain Seller's specific consent to such transfer.

C. Assignor and Agency hereby represent to Seller that Agency shall perform all obligations of Assignor under the Agreement. Based upon such representation, Seller wishes to consent to such transfer subject to the terms of this Assignment.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Agency, Assignor and Seller agree as follows:

1. **Representations.** Assignor and Seller represent and certify the following:
  - a. That all of the above recitals are true and correct.

- b. To the best of Seller and Assignor's knowledge, no default presently exists under the Agreement and no state of facts exist which would constitute a default under the Agreement.
2. **Assignment.** Assignor hereby assigns, sells, and conveys and otherwise transfers to Agency all of Assignor's interests, rights and obligations under the Agreement with respect to the Property. This assignment shall be effective on the Effective Date, as first written above, provided that Seller consents thereto as evidenced by its execution of this Assignment below. Seller's execution below confirms that Assignor shall no longer remain liable for the performance of any obligations, terms, covenants and conditions under the Agreement and Seller hereby agrees to forever release Assignor from the performance of any such obligations, terms, covenants, and conditions under the Agreement.
3. **Assumption of Agreement.** Agency hereby accepts all of Assignor's interests, rights and obligations under the Agreement and assumes and agrees to perform all of Assignor's corresponding obligations, terms, covenants, and conditions under the Agreement on, from and after the Effective Date. Agency acknowledges that (i) it has received a copy of the executed Agreement and is fully familiar with its terms, and (ii) Seller has made no representations concerning the Agreement except as expressly provided herein. Agency further acknowledges and agrees that the Agreement shall control the obligations of Agency and Seller with respect to the Property and that the Agreement shall control over any inconsistent provision in any agreement that may exist between Assignor and Agency.
4. **Seller Financing.** Agency is proceeding on the basis of obtaining the same financing offered by Seller to Assignor. Accordingly, in addition to the replacement of the Deposit, at Closing Agency shall deposit an additional amount of \$130,000 and a promissory note for \$1,020,000, which Note shall have a 6% interest rate and be payable monthly commencing thirty (30) days after Closing in amounts of \$7,307.60 per month for seven (7) years. By consenting to this Assignment, Seller agrees to the continuation of this financing.
5. **Replacement of Deposit.** Seller and Assignor are parties to Escrow No. 19579-MS ("Escrow") at Liberty Escrow ("Escrow Holder"), which was opened pursuant to the Agreement. Assignor has timely deposited the sum of Fifty Thousand Dollars (\$50,000) into Escrow pursuant to Section 2 of the Agreement. Thirty Thousand Dollars (\$30,000) of the deposit is non-refundable and has been tendered to Seller. If Escrow closes, the additional Twenty Thousand Dollars (\$20,000) shall be paid to Seller and the \$50,000 shall be credited towards the purchase price. Pursuant to the Agreement, should Escrow fail to close, the remaining Twenty Thousand Dollars (\$20,000) would be returned to the Assignor.

Within five (5) days of the Effective Date, Agency shall deposit into Escrow the sum of Fifty Thousand Dollars (\$50,000). Upon receipt of the foregoing Agency funds, Escrow Holder shall immediately return to Assignor the \$50,000 that Assignor had deposited and shall hold the additional \$20,000 of Agency's funds as the deposit required under the

Agreement. Should Escrow fail to close after this Assignment has become effective, the remaining Twenty Thousand Dollars (\$20,000) shall be returned to the Agency.

6. **Due Execution.** The person(s) executing this Assignment 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 Assignment on behalf of said party, (iii) by so executing this Assignment, such party is formally bound to the provisions of this Assignment, and (iv) the entering into this Assignment does not violate any provision of any other agreement to which said party is bound.
7. **Full Force and Effect.** The parties further agree that, except as specifically provided in this Assignment, the terms of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed and entered into this Assignment as of the date first written above.

**"Assignor"**  
Martin Coyne

\_\_\_\_\_  
**"Assignee"**  
Banning Redevelopment Agency

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

ATTEST:

\_\_\_\_\_  
Secretary

Approved as to form:

\_\_\_\_\_  
Agency Counsel





**CONTRACT SERVICES AGREEMENT**  
**BETWEEN**  
**THE CITY OF BANNING, CALIFORNIA**  
**COMMUNITY REDEVELOPMENT AGENCY,**  
**AND**  
**THE BANNING CULTURAL ALLIANCE**

**THIS CONTRACT SERVICES AGREEMENT** (herein "Agreement"), is made and entered into this 1st day of July, 2009, by and between the **CITY OF BANNING CALIFORNIA COMMUNITY REDEVELOPMENT AGENCY**, a municipal corporation, (herein "City") and **THE BANNING CULTURAL ALLIANCE**, a California non-profit corporation (herein "Contractor"). (The term Contractor includes professionals performing in a consulting capacity.) The parties hereto agree as follows:

**1.0 SERVICES OF CONTRACTOR**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

**1.2 Contractor's Proposal.**

The Scope of Service shall include the Contractor's proposal or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

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1.3 Compliance with Law.

All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

**2.0 COMPENSATION**

2.1 Contract Sum.

For the services rendered pursuant to this Agreement, the Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of One Hundred and Thirty-One Thousand Five Hundred Dollars (\$131,500) (herein "Contract Sum"), except as provided in Section 1.8. The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expense, transportation expense approved by the Contract Officer in advance, and no other expenses and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City; Contractor shall not be entitled to any additional compensation for attending said meetings.

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2.2 Method of Payments.

Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Contractor wishes to receive payment, no later than the first (1st) working day of such month, Contractor shall submit to the City in the form approved by the City's Director of Finance, an invoice for services rendered prior to the date of the invoice. Except as provided in Section 7.3, City shall pay Contractor for all expenses stated thereon which are approved by City pursuant to this Agreement no later than the last working day of the month.

**3.0 PERFORMANCE SCHEDULE**

3.1 Time of Essence.

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

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D", if any, and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

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

3.4 Term.

Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance.

#### 4.0 COORDINATION OF WORK

##### 4.1 Representative of Contractor.

The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Banning Cultural Alliance  
Attn: Executive Director  
P.O. Box 385  
Banning, CA 92220

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

##### 4.2 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

##### 4.3 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

#### 4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

### 5.0 **INSURANCE, INDEMNIFICATION AND BONDS**

#### 5.1 Insurance.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

(a) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis. If the Contract Sum is \$25,000.00 or less, the policy of insurance shall be written in an amount not less than either (i) a combined single limit of \$500,000.00 or (ii) bodily injury limits of \$250,000.00 per person, \$500,000.00 per occurrence and \$500,000.00 products and completed operations and property damage limits of \$100,000.00 per occurrence and \$100,000.00 in the aggregate. If the Contract Sum is greater than \$25,000.00 but less than or equal to \$100,000.00, the policy of insurance shall be in an amount not less than either (i) a combined single limit of \$1,000,000.00 for bodily injury, death and property damage or (ii) bodily injury limits of \$500,000.00 per person, \$1,000,000.00 per occurrence and \$1,000,000.00 products and completed operations and property damage limits of \$500,000.00 per occurrence and \$500,000.00 in the aggregate. If the Contract Sum is greater than \$100,000.00, the policy of insurance shall be in an amount not less than \$5,000,000.00 combined single limit.

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

(c) Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of \$250,000.00 per person and \$500,000.00 per occurrence and property damage liability limits of \$100,000.00 per occurrence and \$250,000.00 in the aggregate or (ii)

combined single limit liability of \$500,000.00. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Additional Insurance. Policies of such other insurance, including professional liability insurance, as may be required in the Special Requirements.

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

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

**CANCELLATION:**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Agent Initials

The Contractor agrees that the provisions of this Section 5.1 shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.3 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section 5.1.

**5.2 Indemnification.**

Contractor agrees to indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, 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 or in connection with the negligent performance of the work, operations or



activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Contractor hereunder, or arising from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of the City, its officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents or employees, who are directly responsible to the City, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

### 5.3 Performance Bond.

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement, unless such requirement is waived by the Contract Officer. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

### 5.4 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. In the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by this Section 5 may be changed

accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

## **6.0 RECORDS AND REPORTS**

### **6.1 Reports.**

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.2 Records.**

Contractor shall keep, and require subcontractors to keep, such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

### **6.3 Ownership of Documents.**

All drawings, specifications, reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and the City shall indemnify the Contractor for all damages resulting therefrom. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 Release of Documents.

The drawings, specifications, reports, records, documents and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

**7.0 ENFORCEMENT OF AGREEMENT**

7.1 California Law.

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

7.2 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefor. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's or the Contractor's right to terminate this Agreement without cause pursuant to Section 7.8.

7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

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

7.5 Rights and Remedies are Cumulative.

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

7.6 Legal Action.

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

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of NOT APPLICABLE (\$) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any

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services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

**7.9 Termination for Default of Contractor.**

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

**7.10 Attorneys' Fees.**

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**8.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

**8.1 Non-liability of City Officers and Employees.**

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

**8.2 Conflict of Interest.**

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

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

9.0 **MISCELLANEOUS PROVISIONS**

9.1 Notice.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Integration; Amendment.

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

9.4 Severability.

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

9.5 Corporate Authority.

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

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

**CITY:**

CITY OF BANNING CALIFORNIA  
COMMUNITY REDEVELOPMENT  
AGENCY, a municipal corporation

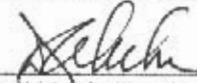
  
Sarh Racadio, Interim Executive Director

**ATTEST:**

  
Marie Calderon, City Clerk 11-17-09

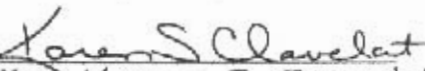
**APPROVED AS TO FORM:**

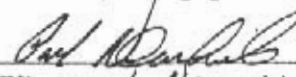
ALESHIRE & WYNDER, LLP

  
David J. Aleshire, City Attorney

**CONTRACTOR:**

BANNING CULTURAL ALLIANCE,  
a California nonprofit Corporation

By:   
Name: KAREN S. Clavelat  
Title: President

By:   
Name: Carol Novak  
Title: Ex Director

Address: P.O. Box 385  
Banning, CA 92220

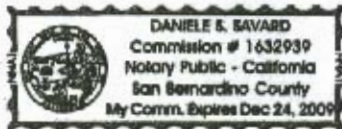
[END OF SIGNATURES]



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of Riverside }  
 On 11-16-09 before me, Daniele S. Savard, Notary Public.  
Date Here Insert Name and Title of the Office  
 personally appeared SAM RACADTO  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature: [Signature]  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: contract services Agreement

Document Date: 07/01/09 Number of Pages: 16 Pages and exhibits

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: SAM RACADTO

- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney In Fact
- Trustee
- Guardian or Conservator

Other: Executive Director

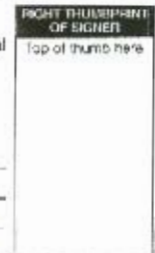
Signer Is Representing: City of Banning Community Redevelopment Agency



Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

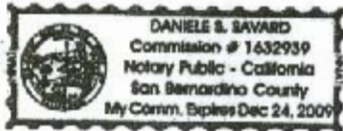
Signer Is Representing: \_\_\_\_\_



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of Riverside }  
 On 11-12-09 before me, Danièle S. Savard, Notary Public  
Date Place, Insert Name and Title of the Officer  
 personally appeared Karen Sandra Clavelot  
Name of Signer(s)

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



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

WITNESS my hand and official seal.

Signature: [Signature]  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

*Though this information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and nullification of this form to another document.*

**Description of Attached Document**

Title or Type of Document: contract services Agreement  
 Document Date: 07/01/09 Number of Pages: 16 Pages  
& Exhibits

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Karen Sandra Clavelot Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): President  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Partner —  Limited  General  Individual  Partner —  Limited  General

Attorney in Fact  Attorney in Fact

Trustee  Trustee

Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

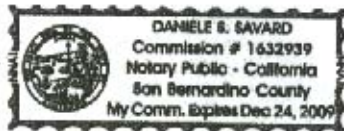
Signer Is Representing: Banning Cultural Alliance



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Riverside }  
On 11-12-09 before me, Daniele S. Savard, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Carol Dawn Newkirk  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature: [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: contract services Agreement  
Document Date: 07/01/09 Number of Pages: 16 Pages + exhibits

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Carol Dawn Newkirk Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): Executive Director  Corporate Officer — Title(s): \_\_\_\_\_

- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer is Representing: Banning Cultural Alliance

Signer is Representing: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF XX )

On INSERT \_\_\_\_, 2009, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF XX )

On INSERT \_\_\_\_, 2009, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**I. Contractor will perform the following Services:**

- A. As described in Attachment 1 to Exhibit A during the period July 1, 2009 to June 30 2010.

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

- A. A. As Described in Attachment 1 to Exhibit A

**III. During performance of the Services, Contractor will keep the Agency apprised of the status of performance by delivering the following status reports:**

- A. Quarterly Status Reports: including activities performed in reporting period, progress achieved on on-going projects, expenditures during reporting period.
- B. Quarterly reports shall be due to Agency 45 days following the close of each quarter.
- C. Additional interim reports as requested by the Agency

**IV. The tangible work products and status reports will be delivered to the Agency/City pursuant to the following schedule:**

- A. B. Reporting Periods:
  - 1) July 1 to September 30
  - 2) October 1 to December 31
  - 3) January 1 to March 31
  - 4) April 1 to June 30
- B. Quarterly reports shall be due to Agency no later than 45 days following the close of each quarter.

**V. Contractor will utilize the following personnel to accomplish the Services:**

- A. To Be Determined

ATTACHMENT 1 TO "EXHIBIT A"

**Banning Cultural Alliance**  
**Downtown Revitalization Plan**  
**2009-2010**

**Introduction**

The Alliance will continue to focus in 2009-2010 on the attached vision core values in 2009-2010. Through the knowledge that has been gathered over the past four years, some changes are proposed for the upcoming project year. A Cultural Plan will be developed to enhance efforts to reach our goals. A PBID is unrealistic in the current economic climate and the reality is that very little has been accomplished to create a reason for businesses and property owners to tax themselves. The Alliance will, instead, continue to develop ways to promote downtown businesses and bring them together to remain informed about progress in revitalizing downtown. This process will keep businesses connected and involved so that when a PBID is feasible the groundwork will have been laid.

**Cultural Plan**

**No Cost**

For 2009-10 The Alliance will focus on a more targeted approach to its revitalization efforts through the development of a cultural plan.

A Cultural Plan will be a specific element of the Five Year Revitalization Plan developed through the City and The Alliance partnership. Additional partners will be identified to join The Alliance in the development and implementation of this plan.

At this time a University of Redlands team and panel of Banning leaders have begun meeting and goals are being developed to move forward.

Elements of work to create the plan will include:

- Establish a task force to create the cultural plan;
- Map current artistic and cultural organizations and activities existing in Banning and the Pass Area;
- Develop a comprehensive marketing plan for current arts and cultural organizations and activities;
- Identify and create special events that will involve all artistic organizations and individuals; and
- Develop a funding plan, i.e., "pennies for art," etc., to support the implementation of the cultural plan.

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Partners on the task force will include all arts and performing arts organizations, interested visual and performing artists, the Chamber of Commerce, the Banning Unified School District and the City of Banning.

**I. Banning Business Activities** **\$9,000**

Downtown Banning businesses will have opportunities to promote their businesses and products through a variety of methods.

- Display art in windows of open businesses and some vacant buildings to create an attractive downtown.
- Place coupons and ads for downtown businesses in Alliance's PAPA playbills for each production.
- Host quarterly forums/socials for downtown businesses to get updates on progress on downtown redevelopment and other items of interest.
- Promote downtown businesses at all downtown events.
- Spotlight a different business each month in the local newspaper and Alliance newsletter.
- Begin and promote a "Buy Banning First" campaign

**Schedule of Events**

- Event 1: Free business ads in Pass Area Performing Artists playbill**  
**September 18, 20**
- Event 2: Free business ads in Pass Area Performing Artists playbill**  
**October 25, 2009**
- Event 3: Free Business ads in Pass Area Performing Artists playbills**  
**Dec. 10, 11, 12, 13, 2009**
- Event 4: Free Business ads in Pass Area Performing Artists playbills**  
**April 2,3, 4, & 9, 10, 11, 2010**
- Event 5: More free ads in Pass Area Performing Artists in playbills**  
**May 8, 15, 22.**
- Event 6: Business Participation in Phineas Festival November 21, 2009**
- Event 7: Business Participation in Art Hop May 1, 2010**

**II. Downtown Promotional Events** **\$63,550**

The Banning Cultural Alliance proposes to continue its successful partnership with the City of Banning to revitalize downtown Banning. Base line activity has been established and institutionalized in downtown Banning.

Events scheduled for downtown for 2009-2010 include:

- The fourth holiday festival, Phineas Festival of Lights in **November 2009**;
- The fourth annual Art Hop in **April 2010**;
- A second year of "Cool Summer Nights" from **May through September 2009**;
- The first "Pass Has Talent" **four Friday nights in September** as part of "Cool Summer Nights" culminating at Stage Coach Days **the first weekend in October 2009**;

Event Schedule

Event 1: Cool Summer Nights	July 10, 17, 24, 31 Aug 7, 14, 21, 28
Event 2: Cool Summer Night/Pass Has Talent	Sept 4, 11, 18, 25
Event 3: Pass Has Talent Final Performance	October 3, 2009
Event 4: Phineas Festival	November 21, 2009
Event 5: Art Hop	May 1, 2009
Event 5: Cool Summer Nights	June 24

III. Banning Center for the Arts Gallery \$14,500

The Banning Center for The Arts Gallery will renovate its space to:

- Increase foot traffic to the Gallery and downtown Banning by featuring themed exhibits, i.e., veterans, politician, holiday, etc.;
- Continue to bring in world class artists and artistic events to downtown;
- generate more revenue and broader awareness of this facility throughout the Pass Area;
- Grow reputation of the quality of the offerings and the expanded classes offered;
- Provide teaching opportunities (and income) to local artists; and
- Seek resources to provide affordable classes to residents with limited resources.

Event Schedule

Event 1: Artist Hanging(six weeks) Ginger Pina	July 8, 2009
Event 2: Artist Reception	July 11, 2009
Event 3: Artist Hanging (six weeks) Hanging the Politicians	August 21, 2009
Event 4: Artist Reception	August 21, 2009
Event 5: Artists Hanging(six weeks) Edwin Tazon	September 15, 2009
Event 6: Artist Reception	September. 19, 2009
Event 7: Artist Hanging (six weeks) Robert French	October 3, 2009
Event 8: Artist Reception	October 10
Event 9: Artist Hanging (six weeks) Don Roth	November 18, 2009



<b>Event 10: Artist Reception</b>	<b>November 21, 2009</b>
<b>Event 11: Artist Hanging ( six weeks)</b> <b>Bridgette Adams-Greb</b>	<b>January 9, 2009</b>
<b>Event 12: Artist Reception</b>	<b>January 16, 2009</b>

**Three Additional artists, yet to be assigned, will be scheduled between February and June 2010**

**Each month weekly activities include 4 days of sales to and viewing by the general public**

**IV. Youth \$32,550**

The Youth Arts Council and associated programs will continue to grow a stable and ongoing program with a core curriculum of visual and performance arts, community service, and art appreciation. This year the Youth Arts Council will:

- Continue to teach theater arts including Readers Theater;
- Hold its second annual Black Heritage program;
- Hold a youth job preparation event, "The Art of Getting Hired";
- Continue to teach youth to perform in public;
- Provide community service opportunities at community events;
- Continue to provide "Youth Teaching Youth" opportunities to middle and high school youth.
- Cooperate with the Banning Unified School District to provide intern opportunities to high school students;
- Cooperate with the Banning Unified School District to provide art appreciation field trips to the Banning Center for the Arts Gallery; and
- Cooperate with the Banning Unified School District to provide visual and performing arts classes to elementary and middle school students.

**Schedule of Events**

<b>Event 1: Cool Summer Nights</b>	<b>July 2009, - September 2009</b>
<b>Event 2 &amp; 3: Dragon Tales ( 2 performances)</b>	<b>August 8, 29, 2009</b>
<b>Event 4: Downtown Halloween Haunted House</b> <b>and family entertainment</b>	<b>October 31, 2009</b>
<b>Event 5: Holiday events</b>	<b>December 15 -22, 2009 Event</b>
<b>6: Black Heritage Day</b>	<b>February 2010</b>
<b>Event 7: Business Expo</b>	<b>October 11, 2009</b>
<b>Event 8: Volunteers at Banning Community Services Halloween</b>	<b>October 24, 2009</b>
<b>Event 8: Cherry Valley Festival</b>	<b>June 2009</b>

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**Weekly curriculum include dance classes, crafts, arts, music, theater, and development of leadership and organizational skills.**

**V. Overhead**

**\$11,900**

### **Collaborations**

The Banning Cultural Alliance will continue to create an atmosphere of cooperation and encourage collaboration with service clubs, the Chamber of Commerce and youth servicing organizations as it provides services to the City of Banning. Our newest collaboration is with the Banning Unified School District.

The Alliance collaborative events currently include:

- The Cultural Plan;
- The Art Hop;
- The Phineas Festival of Lights;
- Support for downtown businesses; and
- Student focused programs.

### **In-kind Contributions**

The Banning Cultural Alliance continues to maximize its resources through the use of in-kind support. For 2009-2010 this includes

- The University of Redlands
- Riverside County GAIN Program
- Sun Lakes Art League
- City Services for events, i.e., public works, police, etc.
- In-kind advertising from LifeStyles magazine, Record Gazette, etc.
- Riverside Arts Council

### **Conclusion**

The Banning Cultural Alliance has successfully partnered with the City of Banning in the development of Downtown since 2005. The fruits of this partnership are evident by the numbers of people who simply know where downtown Banning is and who don't give a second thought to coming downtown after dark.

Our latest joint accomplishment is the development and opening of the Sculpture & Memorial Garden giving local artists a venue to show their work and bringing in artists

from as far away as Ojai, Burbank and Idyllwild. This has made Banning a focus for artists far beyond the Pass Area.

As the City moves forward with its plans for the physical improvements to downtown Banning, The Alliance looks forward to continuing its role in bringing together the elements that will assure a successful cultural and economic future to provide a high quality of life for Banning residents.

#### **Vision Statement**

Downtown Banning is a focal point for activities of all types, including socializing, entertainment, dining, shopping and living, but retaining at its core, the heart of a small town. Those businesses that draw people to downtown Banning are valued as community assets and their needs are met. New entrepreneurs are attracted to live and work in the area. The area becomes so desirable that they remain because they thrive with the increased activity in the area.

Downtown Banning is a safe, vital, and attractive mixed-use environment that celebrates the diversity of entertainment opportunities. A rejuvenated downtown includes a mix of new buildings and renovated structures knitted together with shared architectural features, attractive landscaping, public art and street trees, creating a shady boulevard and accommodating sidewalks that include facilities and rest stops for pedestrians. Other public facilities have also been enhanced. New housing and increased densities in the District create activity and expand the market base for local neighborhood-serving retail. Community identity and the cultural heritage of the community have been strengthened and livable public spaces have been created.

#### **Shared Values**

##### **Value 1: A pedestrian friendly, diverse, destination-oriented, revitalized downtown:**

- High quality, well-managed development a reality
- Safe walkable, well-lighted areas constructed
- Recruitment and promotion of retail and residential uses on-going and active
- Diverse art in public places
- Attractive pocket parks and the "greening" of downtown
- Special indoor-outdoor events and cultural activities take place
- Quality restaurants downtown
- Fox Theatre remodeled with up-to-date seating
- Façade and structural improvements evident on key buildings

##### **Value 2: Appropriate traffic flows and beautified main arterials**

- Attractive main arterials (ex. Ramsey Street and San Geronio Avenue) and more appropriate traffic flows
- Streetscape beautification evident through proper choice and placement of trees and flowering plants, etc.
- Attractive, peaceful and welcoming streetscape

**Value 3: Increased tax and job generating businesses:**

- Variety of shops and services
- Active recruitment of boutiques, restaurants, art galleries, etc.
- Excellent financial base with diversification of revenues supporting the city's budget
- Businesses that are ecologically sensitive and compatible are encouraged

**Value 4: A responsive local government**

- City staff is accessible, dedicated and accountable
- City staff is responsive to residents' and businesses' needs, concerns and inquiries
- Services are provided in an efficient and effective way
- Implementation and enforcement of codes assure the aesthetic vision and the public health of the downtown area
- City Council employs on-going oversight of downtown revitalization by setting annual goals, objectives and timelines with staff, and providing incentives to bring businesses to area.
- Quarterly study sessions with City Council and staff review the status of goals and their implementation
- City staff reaches out and collaborates with the community.
- Consolidation of government and public services

**Value 5: Ecologically and environmentally sensitive businesses generate tax revenue in the downtown area.**

- Businesses in downtown area follow environmentally sensitive practices and exemplify social consciousness through products, services, and appearance.
- All businesses are esthetically pleasing.
- Businesses present do not pollute the environment, are family friendly, and do not cause health problems to customers.
- There are defined design standards for property structures and signage
- City collaborates to assure that businesses who want permits meet all standards
- Xeriscaping is utilized as much as possible
- Graffiti is cleaned up within 72 hours
- Galleries, bookstores, studios and other performing arts venues are featured.
- The atmosphere encourages outdoor dining.

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**

1. The provisions of Section 7.7 requiring liquidated damages are deleted in their entirety.
2. The insurance provisions of Article 5.0 are supplemented by the provisions of Exhibit B1 attached to this Exhibit B. In the event of any conflict, the provisions of B1 shall govern.
3. The provisions of Section 5.3 requiring a performance bond are deleted in their entirety.
4. Exclusion to Section 6.1: Any artwork that is produced by or on behalf of Contractor for the purpose of advertising the events listed in Exhibit D.

**EXHIBIT "B-1"**  
**INSURANCE**

A. Insurance Requirements. Consultant shall provide and maintain insurance, acceptable to the Executive Director or Agency Counsel, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. Consultant shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the Agency.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the Consultant and all risks to such persons under this Agreement.

(4) Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the Agency submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Consultant shall maintain limits of insurance no less than:

(1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Contract/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. A combined single limit policy with aggregate limits in an amount of not

less than \$2,000,000 shall be considered equivalent to the said required minimum limits set forth above.

(3) **Workers' Compensation and Employer's Liability:** Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

(4) **Professional Liability:** \$1,000,000.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Policies. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to Agency.

2. General Liability, Automobile Liability and Professional Liability Coverages.

(1) Agency, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to Agency, and their respective elected and appointed officers, officials, employees or volunteers.

(2) Consultant's insurance coverage shall be primary insurance with respect to Agency, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by Agency, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Consultant's insurance.

(3) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Agency, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless the Executive Director otherwise agrees in writing, the insurer shall agree to waive all rights of

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subrogation against Agency, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Consultant.

C. Other Requirements. Consultant agrees to deposit with Agency, at or before the effective date of this contract, certificates of insurance necessary to satisfy Agency that the insurance provisions of this contract have been complied with. The Agency Attorney may require that Consultant furnish Agency with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Agency reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Consultant shall furnish certificates and endorsements from each subcontractor identical to those Consultant provides.

2. Any deductibles or self-insured retentions must be declared to and approved by Agency. At the option of Agency, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Agency or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Consultant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.



**EXHIBIT "C"  
COMPENSATION**

**BANNING CULTURAL ALLIANCE**

**DOWNTOWN REVITALIZATION**

**2009 - 2010**

		<b>BUDGET</b>
<b>I. Banning Business Activities</b>		
ED .25FTE	\$ 9,000	
		\$ 9,000
<b>II. DOWNTOWN PROMOTIONAL EVENTS</b>		
Coordinator .75 FTE	\$ 37,500	
Equipment Rentals, chairs, portpots	\$ 4,750	
Phone	\$ 2,200	
Advertising	\$ 12,000	
Entertainment	\$ 8,000	
Contractors	\$ 600	
Supplies	\$ 500	
		\$ 63,550
<b>III. GALLERY</b>		
Manager	\$ 7,000	
Utilities	\$ 4,500	
Insurance	\$ 3,000	
		\$ 14,500
<b>IV. YOUTH</b>		
Program Director .75 FTE	\$ 25,740	
Supplies	\$ 2,400	
Building Occupancy	\$ 4,000	
Contractors	\$ 410	
		\$ 32,550
<b>OVERHEAD</b>	\$ 11,900	
		\$ 11,900
<b>TOTAL REQUEST</b>	\$ 131,500	\$ 131,500

2. The Agency will compensate Consultant for the Services performed upon submission of a valid invoice in accordance with Section 2.
3. Consultant shall invoice Agency for work performed and completed in the previous Quarter in accordance with the quarterly report provided and pursuant to all other terms and conditions of this Agreement.

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4. Compensation shall be applied according to the Scope of Work shown in "EXHIBIT A" and ATTACHMENT 1 to "EXHIBIT A". Any use of funds from one category to another or for work, items or activities not listed in the "EXHIBIT A" and ATTACHMENT 1 to "EXHIBIT A" is prohibited. Any changes to the Scope of Work must be approved in advance, writing by the Agency Executive Director.
  5. The total compensation for the Services shall not exceed \$131,500, (One Hundred and Thirty One Thousand Five Hundred Dollars) as provided in Section 4 of this Agreement.

**END**



SUBMITTED: [Signature]

SCHEDULE D ACCEPTED: [Signature]

BANNING BUSINESS ACTIVITIES DATE: 1-11-10

Schedule of Events

- Event 1: Free business ads In Pass Area Performing Artists playbill  
September 18, 20
- Event 2: Free business ads in Pass Area Performing Artists playbill  
October 25, 2009
- Event 3: Free Business ads in Pass Area Performing Artists playbills  
Dec. 10, 11, 12, 13, 2009
- Event 4: Free Business ads in Pass Area Performing Artists playbills  
April 2,3, 4, & 9, 10, 11, 2010
- Event 5: More free ads in Pass Area Performing Artists in playbills  
May 8, 15, 22.
- Event 6: Business Participation in Phineas Festival November 21, 2009
- Event 7: Business Participation in Art Hop May 1, 2010

DOWNTOWN PROMOTIONAL

Event Schedule

- Event 1: Cool Summer Nights  
July 10, 17, 24, 31  
Aug 7, 14, 21, 28
- Event 2: Cool Summer Night/Pass Has Talent  
Sept 4, 11, 18, 25
- Event 3: Pass Has Talent Final Performance  
October 3, 2009
- Event 4: Phineas Festival  
November 21, 2009
- Event 5: Art Hop  
May 1, 2009
- Event 5: Cool Summer Nights  
June 24

BANNING CENTER FOR THE ARTS

Event Schedule

- Event 1: Artist Hanging(six weeks)  
Ginger Pina  
July 8, 2009
- Event 2: Artist Reception  
July 11, 2009
- Event 3: Artist Hanging (six weeks)  
Hanging the Politicians  
August 21, 2009
- Event 4: Artist Reception  
August 21, 2009
- Event 5: Artists Hanging(six weeks)  
Edwin Tazon  
September 15, 2009

INITIAL:                     

*AW*  
*JAF*

Event 6: Artist Reception	September 19, 2009
Event 7: Artist Hanging (six weeks) Robert French	October 3, 2009
Event 8: Artist Reception	October 10
Event 9: Artist Hanging (six weeks) Don Roth	November 18, 2009
Event 10: Artist Reception	November 21, 2009
Event 11: Artist Hanging ( six weeks) Bridgette Adams-Greb	January 9, 2009
Event 12: Artist Reception	January 16, 2009

Three Additional artists, yet to be assigned, will be scheduled between February and June 2010

Each month weekly activities include 4 days of sales to and viewing by the general public

#### YOUTH

##### Schedule of Events

Event 1: Cool Summer Nights	July 2009, - September 2009
Event 2 & 3: Dragon Tales ( 2 performances)	August 8, 29, 2009
Event 4: Business Expo	October 11, 2009
Event 5: Booth at Community Services Halloween	October 24, 2009
Event 6: Downtown Halloween Haunted House and family entertainment	October 31, 2009
Event 7: Holiday events	December 15 -22, 2009
Event 8: Black Heritage Day	February 2010
Event 9: Cherry Valley Festival	June 2010

Weekly curriculum includes dance classes, crafts, arts, music, theater, and development of leadership and organizational skills. Other events then those listed may be planned by the youth.

**John Jansons**

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**From:** Cdnkirk@aol.com  
**Sent:** Thursday, November 05, 2009 9:37 AM  
**To:** John Jansons  
**Subject:** Schedule D  
**Attachments:** SCHEDULE D.doc

John - attached find schedule D for contract. let me know if you have any questions. thanks, carol

Banning Cultural Alliance - Annual Work Plan and Budget FY 2009-2010  
 Supplement and Addendum to Schedule D - Attachment 1 - "English A"  
 FIRST QUARTER JULY 1, 2009 to SEPT 30, 2009

SUBMITTED: *Cheryl Lyle* DATE: 1-11-10  
 ACCEPTED: *[Signature]*

Item	Date Or Interval	Work Group	Event or Activity	Percent Complete Per Quarter of Annual Deliverable	Total Annual Budget	Amount Billed Per Quarter
SECTION I	July 1 - Sept 30, 2009	Section I Business Activities	Presenta Downtown Businesses	25%	\$0,000.00	\$2,280.00
1.1	July 1 - Sept 30, 2009	Section I Business Activities	Overlook Businessess Nanticoke Campus with University of Redondo Student Group	100%		\$1,125.00
1.2	Sept 18 and 20 2009	Section I Business Activities	Business Advertising in SAPA Events	100%		\$2,280.00
SUB-TOTAL SECTION I						\$1,125.00
SECTION II	July 1 - Sept 30, 2009	Section II Events	Events Operations/production	25%	\$63,500.00	\$16,888.00
2.1	10-Jul-09	Section II Events	Good Summer Nights	100%		\$1,316.66
2.2	17-Jul-09	Section II Events	Good Summer Nights	100%		\$1,316.66
2.3	24-Jul-09	Section II Events	Good Summer Nights	100%		\$1,316.66
2.4	31-Jul-09	Section II Events	Good Summer Nights	100%		\$1,316.66
2.5	7-Aug-09	Section II Events	Good Summer Nights	100%		\$1,316.66
2.6	14-Aug-09	Section II Events	Good Summer Nights	100%		\$1,316.66
2.7	21-Aug-09	Section II Events	Good Summer Nights	100%		\$1,316.66
2.8	28-Aug-09	Section II Events	Good Summer Nights	100%		\$1,316.66
2.9	4-Sep-09	Section II Events	Good Summer Nights & Post Hix Talent	100%		\$1,316.66
2.10	11-Sep-09	Section II Events	Good Summer Nights & Post Hix Talent	100%		\$1,316.66
2.11	18-Sep-09	Section II Events	Good Summer Nights & Post Hix Talent	100%		\$1,316.66
2.12	25-Sep-09	Section II Events	Good Summer Nights & Post Hix Talent	100%		\$1,316.66
SUB-TOTAL SECTION II						\$16,888.00
SECTION III	July 1, 2009 - June 30, 2010	Section III Gallery	Gallery Operations/Exhibitions	35%	\$14,500	\$3,822.00
3.1	July 1-Sept 30, 2009	Section III Gallery	Gallery Operations/Exhibitions	35%		\$3,822.00
3.2	July 8-2009 - 9 weeks	Section III Gallery	Gallery Tours	100%		\$604.10
3.3	July 11, 2009	Section III Gallery	Artist Reception	100%		\$604.10
3.4	Aug 21, 2009 2 weeks	Section III Gallery	Hanging the Pictures	100%		\$604.10
3.5	21-Aug-09	Section III Gallery	Artist Reception	100%		\$604.10
3.6	Sept 10, 2009 6 weeks	Section III Gallery	Artist Reception, Ethel Tarron	100%		\$604.10
3.7	19-Sep-09	Section III Gallery	Artist Reception	100%		\$604.10
SUB-TOTAL SECTION III						\$3,822.00
SECTION IV	July 1, 2009 - June 30, 2010	Section IV Youth	Youth Program Operations/production	35%	\$12,000.00	\$3,117.00
4.1	July 1, 2009 - Sept 30, 2009	Section IV Youth	Weekly set dishes, computer programs	100%		\$2,712.33
4.2	July 1, 2009 - Sept 30, 2009	Section IV Youth	Good Summer Nights	100%		\$2,712.33
4.3	Aug 8, 2009 and Aug 29, 2009	Section IV Youth	Dragon Tales	100%		\$2,712.33
SUB-TOTAL SECTION IV						\$3,117.00
SECTION V	July 1, 2009 - June 30, 2010	Section V Overhead	General/Administrative Overhead	20%	\$11,000.00	\$2,375.00
5.1	July 1, 2009 - Sept 30, 2009	Section V Overhead	Overhead	100%		\$2,375.00
SUB-TOTAL SECTION V						\$2,375.00
Total Estimate for 1st Quarter						\$
						33,875

Banning Cultural Alliance - Annual Work Plan and Budget FY 2009-2010  
 Supplement and Addendum of Schedule D-Attachment 1 - "Exhibit A"  
 SECOND QUARTER OCTOBER 1, 2009 to DECEMBER 31, 2009

SUBMITTED: Cheryl B... DATE: 11/11/09  
 ACCEPTED: [Signature] DATE: 1-11-10

Item	Date On or About	Work Group	Event or Activity	Percent Complete Per Quarter of Annual Deliverable	Total Annual Budget	Estimated Amount Billed Per Quarter
SECTION I	October 1, 2009 - December 31, 2009	Section I - Business Activities	Promote Downtown Businesses	25%	\$9,000.00	\$2,250.00
1.1	October 1, 2009 - December 31, 2009	Section I - Business Activities	Downtown Business Promotion Campaign with University of Redlands	100%		\$750.00
1.2	Oct 25, Dec 10, 11, 12, 13, 2009	Section I - Business Activities	Free Business Acts in PAPA Playbill	100%		\$750.00
1.3	October 1, 2009 - November 21, 2009	Section I - Business Activities	Recital Business for Participation in Prince's Festival and Holiday Lighting	100%		\$750.00
					SUB-TOTAL SECTION I	\$2,250.00
SECTION II	October 1, 2009 - December 31, 2009	Section II - Events	Events Operations/Production	25%	\$63,650.00	\$15,888.00
2.1	October 3, 2009	Section II - Events	Past Has Talent - Final	100%		\$7,944.00
2.2	November 21, 2009	Section II - Events	Prince's Festival of Lights	100%		\$7,944.00
					SUB-TOTAL SECTION II	\$15,888.00
SECTION III	October 1, 2009 - December 31, 2009	Section III - Gallery	Gallery Operations/Exhibitions	25%	\$14,600.00	\$3,625.00
3.1	October 1, 2009 - December 31, 2009	Section III - Gallery	Gallery Operations and Exhibitions	100%		\$725.00
3.2	October 3, 2009	Section III - Gallery	Robert French	100%		\$725.00
3.3	October 10, 2009	Section III - Gallery	Adult Reception	100%		\$725.00
3.4	November 18, 2009	Section III - Gallery	Don Roth	100%		\$725.00
3.5	November 21, 2009	Section III - Gallery	Adult Reception	100%		\$725.00
					SUB-TOTAL SECTION III	\$3,625.00
SECTION IV	October 1, 2009 - December 31, 2009	Section IV - Youth	Youth Program Operations/Production	25%	\$32,650.00	\$8,137.00
4.1	October 1, 2009 - December 31, 2009	Section IV - Youth	Weekly art dance computer program	100%		\$2,034.25
4.2	October 31, 2009	Section IV - Youth	Halloween Haunted House	100%		\$2,034.25
4.3	October 24 & 31, 2009	Section IV - Youth	Halloween Party	100%		\$2,034.25
4.4	October 24, 2009	Section IV - Youth	Awards Night	100%		\$2,034.25
					SUB-TOTAL SECTION IV	\$8,137.00
SECTION V	October 1, 2009 - December 31, 2009	Section V - Overhead	General/Administrative Overhead	25%	\$11,900.00	\$2,975.00
6.1	October 1, 2009 - December 31, 2009	Section V - Overhead	General/Administrative Overhead	100%		\$2,975.00
					SUB-TOTAL SECTION V	\$2,975.00
<b>Total Estimate for 2nd Quarter</b>						<b>\$ 32,875</b>



**Banning Cultural Alliance - Annual Work Plan and Budget FY 2009-2010  
 Supplement and Addendum to Schedule D of Attachment 1-"Exhibit A"  
 THIRD QUARTER JANUARY 1, 2010 to MARCH 31, 2010**

SUBMITTED: *Carla B. Wood* DATE: *11/11/09*  
 ALLOCATED: *Carla B. Wood* DATE: *11/11/09*

Item	Date On or About	Work Group	Event or Activity	% Complete Per Quarter of Annual Deliverable	Total Annual Budget	Estimated Amount Billied Per Quarter
SECTION I	January 1, 2010 - March 31, 2010	Section I Business Activities	Promote Downtown Businesses DownTown Business Promotion Campaign with University of Redlands Student Group Recruit Business Participants for Art Hop	25%	\$9,000.00	\$2,250.00
1.1	January 1, 2010 - March 31, 2010	Section I Business Activities		100%		\$1,225.00
1.2	January 1, 2010 - March 31, 2010	Section I Business Activities		100%		\$1,225.00
					<b>SUB-TOTAL SECTION I</b>	<b>\$2,250.00</b>
SECTION II	January 1, 2010 - March 31, 2010	Section II Events	Events Operational/Production	25%	\$83,550.00	\$15,888.00
2.1		Section II - Events	Preparing for Art Hop	100%		\$7,944.00
2.2		Section II - Events	Preparing for Coal Summer Nites	100%		\$7,944.00
					<b>SUB-TOTAL SECTION II</b>	<b>\$15,888.00</b>
SECTION III	January 1, 2010 - March 31, 2010	Section III Gallery	Gallery Operations/Exhibitions	25%	\$14,800.00	\$3,825.00
3.1	January 1, 2010 - March 31, 2010	Section III - Gallery	Gallery Operations and Exhibitions	100%		\$725.00
3.2	January 8, 2010 - February 18, 2010	Section III - Gallery	Artist Adams	100%		\$725.00
3.3	January 15, 2010	Section III - Gallery	Artist Reception	100%		\$725.00
3.4	February 18, 2010 - March 27, 2010	Section III - Gallery	Nancy Carroll	100%		\$725.00
3.5	February 28, 2010	Section III - Gallery	Artist Reception	100%		\$725.00
					<b>SUB-TOTAL SECTION III</b>	<b>\$3,825.00</b>
SECTION IV	January 1, 2010 - March 31, 2010	Section IV Youth	Youth Program Operations/Production	25%	\$32,580.00	\$8,131.00
4.1	January 1, 2010 - March 31, 2010	Section IV - Youth	Weekly Art, dance, gourmet program	100%		\$2,034.25
4.2	January 1, 2010 - March 31, 2010	Section IV - Youth	Heremissinoe Celebration	100%		\$2,034.25
4.3	January 1, 2010 - March 31, 2010	Section IV - Youth	Art Classes by Sun Lakes Art League	100%		\$2,034.25
4.4	February 1, 2010	Section IV - Youth	Black Heritage Day Activities	100%		\$2,034.25
					<b>SUB-TOTAL SECTION IV</b>	<b>\$8,131.00</b>
SECTION V	January 1, 2010 - March 31, 2010	Section V Overhead	General/Administrative Overhead	25%	\$11,900.00	\$2,975.00
5.1	January 1, 2010 - March 31, 2010	Section V Overhead	General/Administrative Overhead	100%		\$2,975.00
					<b>SUB-TOTAL SECTION V</b>	<b>\$2,975.00</b>
					<b>Total Estimate for 3rd Quarter</b>	<b>\$32,875.00</b>

**Banning Cultural Alliance - Annual Work Plan and Budget FY 2009-2010**  
**Supplement and Addendum of Schedule D - Attachment 1 - "Exhibit A"**  
**FOURTH QUARTER April 1, 2010 to June 30, 2010**

SUBMITTED: [Signature] DATE: 1-11-10  
 APPROVED: [Signature]

Item	Date On or About	Work Group	Event or Activity	% Complete Per Quarter of Annual Deliverable	Total Annual Budget	Estimated Amount Billed Per Quarter
<b>SECTION I</b>	<b>April 1, 2010 - June 30, 2010</b>	<b>Section I Business Activities</b>	<b>Promote Downtown Businesses</b>			
1.1	April 1, 2010 - June 30, 2010	Section I Business Activities	Downtown Businesses Promotion	25%	\$9,000.00	\$2,250.00
1.2	Apr. 2, 3, 4, 9, 10, 11 & May 6, 15, 22, 2010	Section I Business Activities	Free Business Acq. in PAPA Plaza	100%		
					<b>SUB-TOTAL SECTION I</b>	<b>\$2,250.00</b>
<b>SECTION II</b>	<b>April 1, 2010 - June 30, 2010</b>	<b>Section II Events</b>	<b>Events Operation/Production</b>			
2.1	May 1, 2010	Section II - Events	5th Annual Art Ho	25%	\$53,590.00	\$13,398.00
2.2	April 1, 2010 - June 30, 2010	Section II - Events	Preparing for Good Summer Nites	100%		\$5,296.00
2.3	June 1, 2010 - June 30, 2010	Section II - Events	Good Summer Nites Shared	100%		\$5,296.00
					<b>SUB-TOTAL SECTION II</b>	<b>\$15,990.00</b>
<b>SECTION III</b>	<b>April 1, 2010 to June 30, 2010</b>	<b>Section III Gallery</b>	<b>Gallery Operations/Exhibitions</b>			
3.1	January 1, 2010 - March 31, 2010	Section III - Gallery	Gallery Operations and Exhibitions	25%	\$14,500.00	\$3,625.00
3.2	January 8, 2010 - February 19, 2010	Section III - Gallery	Budget Address	100%		\$725.00
3.3	January 15, 2010	Section III - Gallery	Artel Reception	100%		\$725.00
3.4	February 19, 2010 - March 27, 2010	Section III - Gallery	Nancy Curral	100%		\$725.00
3.5	February 26, 2010	Section III - Gallery	Artel Reception	100%		\$725.00
					<b>SUB-TOTAL SECTION III</b>	<b>\$5,825.00</b>
<b>SECTION IV</b>	<b>April 1, 2010 to June 30, 2010</b>	<b>Section IV Youth</b>	<b>Youth Program Operation/Production</b>			
4.1	April 1, 2010 to June 30, 2010	Section IV - Youth	Youth art, dance, computer program	25%	\$32,890.00	\$8,137.00
4.2	April 1, 2010 to June 30, 2010	Section IV - Youth	Art Hop Participation	100%		\$2,034.25
4.3	April 1, 2010 to June 30, 2010	Section IV - Youth	Good Summer Nites participation	100%		\$2,034.25
4.4	June 1, 2010	Section IV - Youth	Youth Participation in Cherry Festival	100%		\$2,034.25
					<b>SUB-TOTAL SECTION IV</b>	<b>\$6,137.00</b>
<b>SECTION V</b>	<b>April 1, 2010 to June 30, 2010</b>	<b>Section V Overhead</b>	<b>General/Administrative Overhead</b>			
5.1	April 1, 2010 to June 30, 2010	Section V Overhead	General/Administrative Overhead	25%	\$14,990.00	\$3,728.00
				100%		\$2,975.00
					<b>SUB-TOTAL SECTION V</b>	<b>\$2,975.00</b>
					<b>Total Estimate for 4th Quarter</b>	<b>\$32,875.00</b>