

## City of Banning Office of the Mayor

July 19, 2016

Harold W. Hopp, Presiding Judge  
Riverside County Superior Court  
4050 Main Street  
Riverside, CA 92501

Re: Response to the Riverside County Civil Grand Jury's Report  
Regarding the Banning Chamber of Commerce

Dear Judge Hopp:

On April 27, 2016, the Riverside County Civil Grand Jury issued its report entitled "City of Banning – Banning Chamber of Commerce." The Report focuses on the Chamber of Commerce's compliance with its lease with the former Banning Community Redevelopment Agency, including provisions relating to the establishment of a maintenance fund, the payment of utilities and the naming of the City as an additional insured under the Chamber's insurance policy, among other issues. At the conclusion of the Report, the Grand Jury issued four findings and five recommendations relative to the Chamber lease. We appreciate the opportunity to provide the following responses to these findings and recommendations in accordance with Penal Code §933.05.

The City responds to the specific findings in the Report as follows:

*Response to Finding No. 1:*

The City agrees with Finding No. 1 in the following respects. The Chamber and the former Community Redevelopment Agency entered into a lease agreement for the City-owned property located at 60 East Ramsey Street on January 18, 2006. The parties entered into Amendment No. 1 to Lease Agreement on May 30, 2006 (the "Lease"). Section 6(b) of the Lease requires the Chamber to establish a \$10,000 maintenance fund to ensure

the maintenance of the property in a good, clean and sanitary condition. Section 7 of the Lease requires to the Chamber to have a policy of insurance that names the City of Banning as an additional insured. Compliance with these Lease provisions is discussed below.

*Response to Finding No. 2:*

The City agrees with Finding No. 2. The Chamber failed to pay utility charges during the period between 2006 and 2013. The City corresponded with the Chamber on several occasions. Most recently, on May 26, 2016, the City through legal counsel demanded that the Chamber pay \$15,795.25 in past due utility charges.

*Response to Finding No. 3:*

The City agrees with Finding No. 3 except to note that the Lease permits the Chamber to sublease portions of the Property. Because the Chamber's sublease with Southern California Gas Company was authorized by the Lease, the City has not ceded rental income to the Chamber.

*Response to Finding No. 4:*

The City agrees with finding No. 4. The City notes, however, that the process to collect the outstanding judgment from the former Executive Director has begun.

The City responds to the specific recommendations in the Report as follows:

*Response to Recommendation No. 1:*

In Recommendation No. 1, the Grand Jury recommends that the City take formal action to terminate its lease with the Chamber if the Chamber fails to establish a maintenance fund and add the City as a payee under its insurance policy.

Recommendation No. 1 has been implemented. On May 24, 2016, the Chamber established a \$10,000 maintenance fund as required by Lease section 6(b). On July 12, 2016, the City Council also directed the City Manager to work with the Chamber to identify a procedure that will ensure

that the maintenance fund maintains the \$10,000 balance at all times as required under the lease (e.g. placing the money in an escrow account or allowing the City to hold the maintenance fund in a restricted fund within the City's budget). The Chamber also provided satisfactory evidence of insurance that names the City of Banning as an additional insured under the insurance policies as required by Sections 7 of the Lease.

Additionally, the City is also updating its lease and contract policies and procedures to ensure compliance with the provisions in all contracts and leases.

*Response to Recommendation No. 2:*

The Grand Jury's second recommendation suggests that the City reach an agreement with the Chamber for the payment of past due utility bills in the amount of \$15,795.25. Implementation of the recommendation is ongoing.

On May 26, 2016, the City formally demanded that the Chamber pay its outstanding utility bill obligation in full within 30 days. On June 28, 2016, the Chamber's President, Ron Duncan, publicly requested from the Council an extension of time to comply with the demand and on July 12, 2016, the Council approved the extension until August 23, 2016. If the utility bill obligation is not paid by August 23<sup>rd</sup>, the City Council will evaluate its available legal remedies, including initiating an action to collect the outstanding utility bill obligation or terminating the lease, at its August 23, 2016 City Council meeting.

*Response to Recommendation No. 3:*

Recommendation No. 3 is not applicable as the City does not intend to cancel the Chamber's lease so long as the Council's conditions are met by maintaining the \$10,000 maintenance fund and paying off the obligation by August 23, 2016, as discussed above.

*Response to Recommendation No. 4:*

Implementation of Recommendation No. 4 is ongoing. In order to collect the debt, the City hired attorneys specializing in the debt collection (the McIntyre Law Group). MLG has been tasked with filing a writ of execution on the outstanding judgment along with an application for earnings

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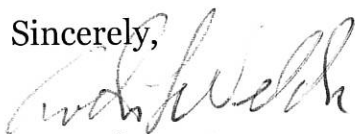
withholding (i.e., wage garnishment) until the entire outstanding debt is paid in full.

*Response to Recommendation No. 5:*

The Grand Jury's fifth recommendation requests the resignation of the Chamber's Executive Director. It is the City's understanding that Jim Smith, the Chamber's Executive Director, resigned and is no longer Executive Director.

We thank you for the opportunity to respond to the Report. Should you have any further questions or desire any further information, please contact me or City Manager Michael Rock.

Sincerely,



Art Welch, Mayor  
City of Banning

c: Honorable City Council  
David T. Gluth, Foreperson  
Michael Rock, City Manager  
John C. Cotti, Interim City Attorney