



**CITY OF CORNING
SPECIAL COUNCIL MEETING SESSION**

**WEDNESDAY, JUNE 9, 2010
CITY COUNCIL CHAMBERS
794 THIRD STREET**

A. CALL TO ORDER: 7:30 p.m.

B. ROLL CALL:

Council:

**Vacant
Ross Turner
Toni Parkins
John Leach
Gary Strack**

Mayor:

C. PLEDGE OF ALLEGIANCE:

D. BUSINESS FROM THE FLOOR: If there is anyone in the audience wanting to speak on an item not already on tonight's Agenda, please come to the podium, identify yourself and briefly present your information to the Council. If an item is already on the agenda, please wait until that item comes up for discussion and then obtain the Mayor's attention so you will be allowed to speak. **A three-minute time limit will apply unless the Council makes an exception due to special circumstances.** If your matter will require more time or formal action by the Council, the law requires that it be placed on the printed Agenda for a future meeting so that interested members of the public will have the chance to appear and speak on the subject.

E. REGULAR AGENDA:

1. Determination of Need for Closed Session.

The **Brown Act** requires that the Council provide the opportunity for persons in the audience to briefly address the Council on the subject(s) scheduled for tonight's closed session. Is there anyone wanting to comment on the subject(s) the Council will be discussing in closed session? If so, please come to the podium, identify yourself and give us your comments.

F. ADJOURN TO CLOSED SESSION:

CONFERENCE WITH LABOR NEGOTIATORS PURSUANT TO SECTION 54957.6:

Agency Designated Representatives:

- a. Mayor Gary Strack
- b. Vice Mayor Ross Turner

Employees:

- a. City Manager Stephen J. Kimbrough
- b. Police Chief Tony Cardenas

G. RECONVENE REGULAR MEETING AND REPORT ON CLOSED SESSION:

- a. Announcement of Reportable Action Taken, if any, in Closed Session and the Associated Votes:

REGULAR AGENDA (CONTINUED):

2. **Adopt Resolution 06-09-10-01 to Radify Sideletters Accepting the Furlough Plan for Each of the Individual Employee Bargaining Units and Set Office Furlough Closure Days.**
3. **Approve Part-time Employment Contract for Police Chief Tony Cardenas.**
4. **Approve Part-time Employment Contract for City Manager Stephen J. Kimbrough.**

H. ADJOURNMENT!:

POSTED: MONDAY, JUNE 7, 2010

**ITEM NO.: G-2
RESOLUTION NO. 06-09-10-01 TO RATIFY
SIDELETTERS ACCEPTING THE FURLOUGH PLAN
FOR EACH OF THE INDIVIDUAL EMPLOYEE UNITS
AND SET OFFICE FURLOUGH CLOSURE DAYS.
JUNE 9, 2010**

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER

SUMMARY:

Included for City Council Ratification are Sideletters with each of the four Employee Bargaining Units. The terms of the Sideletters explain the process for implementing a ten percent (10%) reduction in employee compensation through an eight (8) hour furlough in every eighty (80) hour pay period (two-weeks).

Included with this report is a Resolution that sets the public office hours for City Hall and the City Yard, which encompasses closing every other Friday. The closing of City Hall and the City Yard are necessary, because the small number of City Staff cannot be spread effectively to keep City Hall and the Yard open full time. City service levels are reduced as a result.

There will be no change in the public office hours for either the Police or Fire Departments.

BACKGROUND:

The Employee Furlough Plan previously approved by the City Council during the Budget Meetings, will save the City General Fund \$281,779 over the twelve (12) month period between July 1, 2010 and June 30, 2011.

Though the Sideletter Agreements with the City Employee Bargaining Units all sunset on June 30, 2011, both the employees and City must understand that this is totally dependant upon the recovery of the local economy.

RESOLUTION NO. 06-09-10-01:

City Code Chapter 2.28 provides the City Council with the ability to set the public office hours through a Resolution of the Council. This Resolution implements the Furlough Plan by closing City Hall and Public Offices every other Friday during the period July 1, 2010 through June 30, 2011.

At City Council direction, Staff developed a notification of City Hall closure that is posted and easily understood by City Customers. Currently City Staff posts a two-month calendar showing the days of closure and include any coming City Holidays on the same schedule. A brief explanation of the reason for the closure of City Hall is included.

RECOMMENDATION:

MAYOR AND COUNCIL:

- a. **RATIFY THE SIDELETTERS TO THE MEMORANDUMS OF UNDERSTANDING WITH THE FOUR CITY EMPLOYEE BARGAINING UNITS AND;**
- b. **ADOPT RESOLUTION NO. 06-09-10-01 IMPLEMENTING A REDUCTION IN EMPLOYEE COMPENSATION AND HOURS OF WORK BY THE CLOSURE OF CITY HALL AND THE CITY YARD EVERY OTHER FRIDAY DURING THE PERIOD OF JULY 1, 2010 THROUGH JUNE 30, 2011.**

RESOLUTION NO. 06-09-10-01

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORNING
IMPLEMENTING A REDUCTION
IN EMPLOYEE COMPENSATION AND HOURS OF WORK
BY THE CLOSURE OF CITY HALL AND THE CITY YARD
EVERY OTHER FRIDAY DURING THE PERIOD OF
JULY 1, 2010 THROUGH JUNE 30, 2011**

WHEREAS, the City of Corning is faced with a decline in City revenues of over \$1,000,000 per year as a result of the current economic recession; and

WHEREAS, the City, working with its Employees, has devised a plan which will reduce all employee compensation by ten percent (10%) per year through reducing employees hours of work by eight (8) hours in every 80 hour payperiod; and

WHEREAS, the City of Corning has already reduced staffing by four (4) public works positions, leaving a total of 47 full-time City Employees; and

WHEREAS, attempting to keep City Hall and the City Yard Offices and Services operating with an additional reduction in worker hours of ten percent (10%) will adversely affect the ability to provide service to the public; and

WHEREAS, Corning Municipal code Section 2.28 requires Public Office hours be set by Resolution.

NOW, THEREFORE, BE IT RESOLVED that in accordance with Corning Municipal Code Section 2.28, the City Council of the City of Corning does hereby establish public office hours for City Hall and City Yard, closing the offices every other Friday during the period July 1, 2010 through June 30, 2011 as indicated on the following dates:

July 2, 2010	July 16, 2010	July 30, 2010
August 13, 2010	August 27, 2010	September 10, 2010
September 24, 2010	October 8, 2010	October 22, 2010
November 5, 2010	November 19, 2010	December 3, 2010
	December 17, 2010	
December 30, 2010 (Thursday – due to January 1, 2010 Holiday falling on a Saturday)		
January 14, 2011	January 28, 2011	February 11, 2011
February 25, 2011	March 11, 2011	March 25, 2011
April 8, 2011	April 21, 2011	May 6, 2011
May 20, 2011	June 3, 2011	June 17, 2011

BE IT FURTHER RESOLVED, that the City Council recognizes that this serious reduction in service to the public results from the economic recession forcing a reduction by ten percent (10%) in employee compensation.

PASSED AND ADOPTED by the City Council of the City of Corning on this **9th** day of **June** **2010** by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Gary R. Strack, Mayor

ATTEST:

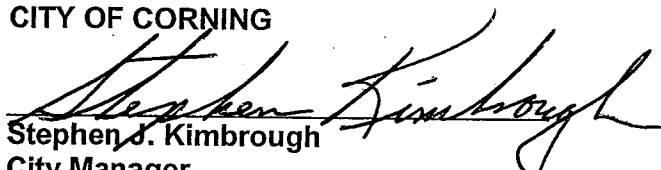
Lisa M. Linnet, City Clerk

**CONTINUATION OF SIDE LETTER OF AGREEMENT
BETWEEN
CITY OF CORNING
AND
MANAGEMENT UNIT
Re: Furloughs
June 2, 2010**

Furloughs began on October 4, 2009 and would have ended June 30, 2010. The parties have met and agreed to continue the furloughs through June 30, 2011. The City and the Management Unit agree to staff furloughs as follows:

1. All regular full-time members of the Management Unit shall be furloughed eight (8) hours each pay period with a corresponding loss of pay.
 2. Furloughs will continue beginning July 1, 2010 and run through June 30, 2011.
 3. **The ongoing uncertainty of the City's financial condition makes it impossible to absolutely guarantee that there will be no lay offs during FY 2010-2011. The City therefore agrees as follows:**
 - a. **Should the City lay off any regular full time City employee, furloughs will be discontinued and hours and salaries will be adjusted back to their normal pre-furlough hours and salaries effective the start of the pay period closest to the date the lay off(s) actually occur.**
- and
- b. **Regular full time City employees who are actually laid off shall receive one month's severance pay at their normal pre-furlough rate.**
 4. Management Unit Employees have the flexibility to provide their own scheduling, subject to City Manager and/or his designee review and concurrence so long as they reduce their schedule by the required eight (8) hours per pay period.
 5. All contractual obligations not addressed in this side letter agreement remain in force.


CITY OF CORNING


Stephen J. Kimbrough
City Manager


William May
Chief Consultant


Lisa M. Linnet
City Clerk

OPERATING ENGINEERS LOCAL
UNION NO. 3 AFL-CIO


Art Froli
OE-3 Business Representative

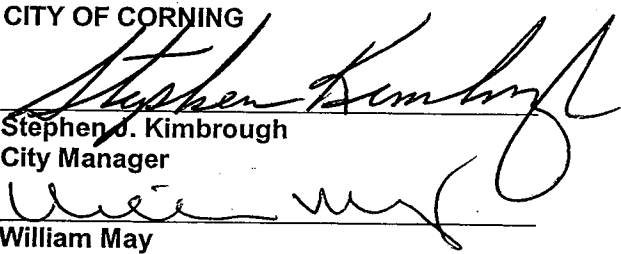

Tony Cardenas
Employee Representative

**CONTINUATION OF SIDE LETTER OF AGREEMENT
BETWEEN
CITY OF CORNING
AND
MISCELLANEOUS UNIT
Re: Furloughs
June 2, 2010**


Furloughs began on October 4, 2009 and would have ended June 30, 2010. The parties have met and agreed to continue the furloughs through June 30, 2011. The City and the Miscellaneous Unit agree to staff furloughs as follows:

1. All regular full-time members of the Miscellaneous Unit shall be furloughed eight (8) hours each pay period with a corresponding loss of pay.
2. Furloughs will continue beginning July 1, 2010 and run through June 30, 2011.
3. The ongoing uncertainty of the City's financial condition makes it impossible to absolutely guarantee that there will be no lay offs during FY 2010-2011. The City therefore agrees as follows:
 - a. Should the City lay off any regular full time City employee, furloughs will be discontinued and hours and salaries will be adjusted back to their normal pre-furlough hours and salaries effective the start of the pay period closest to the date the lay off(s) actually occur.
- and
- b. Regular full time City employees who are actually laid off shall receive one month's severance pay at their normal pre-furlough rate.
4. City Hall and the Yard shall continue be closed every other Friday concluding with the end of furlough days on June 30, 2011.
5. Miscellaneous Unit members work schedules shall consist of five (5), eight (8) hour days per week Monday through Friday alternating with four(4), eight (8) hour days Monday through Thursday for a total of seventy-two (72) hours worked during a pay period.
6. Overtime shall be paid after eight (8) hours in a day, or forty (40) hours in a workweek; or, after eight (8) hours in a day or thirty-two (32) hours in a workweek, dependent upon the workweek schedule.
7. The Community Services Officers workweek shall meet the needs of the Police Department and be based upon the schedule developed by the Police Chief (attached as part of this side letter).
8. All contractual obligations not addressed in this side letter agreement remain in force.

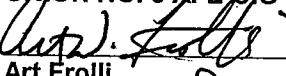
CITY OF CORNING

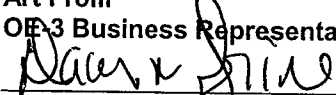

Stephen J. Kimbrough
City Manager


William May
Chief Consultant


Lisa M. Linnet
City Clerk

OPERATING ENGINEERS LOCAL
UNION NO. 3 AFL-CIO


Art Frolli
OE 3 Business Representative


Dawn Grine
Employee Representative

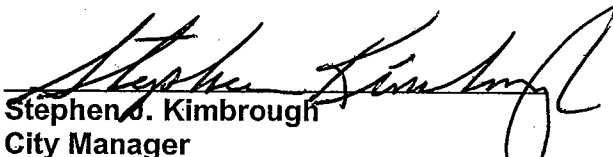

Tatia Dawley
Employee Representative

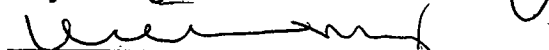
**CONTINUATION OF SIDE LETTER OF AGREEMENT
BETWEEN
CITY OF CORNING
AND
DISPATCHER UNIT
Re: Furloughs
June 2, 2010**


Furloughs began on October 4, 2009 and would have ended June 30, 2010. The parties have met and agreed to continue the furloughs through June 30, 2011. The City and the Dispatcher Unit agree to staff furloughs as follows:

1. All regular full-time members of the Dispatcher Unit shall be furloughed eight (8) hours each pay period with a corresponding loss of pay.
 2. Furloughs will continue beginning July 1, 2010 and run through June 30, 2011.
 3. **The ongoing uncertainty of the City's financial condition makes it impossible to absolutely guarantee that there will be no lay offs during FY 2010-2011. The City therefore agrees as follows:**
 - a. **Should the City lay off any regular full time City employee, furloughs will be discontinued and hours and salaries will be adjusted back to their normal pre-furlough hours and salaries effective the start of the pay period closest to the date the lay off(s) actually occur.**
- and
- b. **Regular full time City employees who are actually laid off shall receive one month's severance pay at their normal pre-furlough rate.**
4. All hours worked over seventy-two (72) hours in a pay period will be compensated at the time and one half (1.5) rate.
 5. Police Dispatcher and Fire Dispatcher schedules are attached as part of this side letter.
 6. All contractual obligations not addressed in this side letter agreement remain in force.

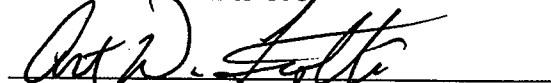
CITY OF CORNING

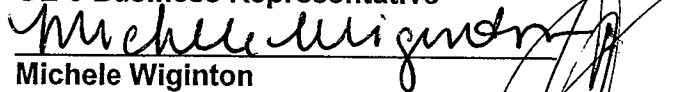

Stephen J. Kimbrough
City Manager

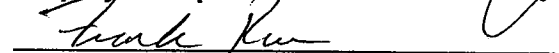

William May
Chief Consultant


Lisa M. Linnet
City Clerk

**OPERATING ENGINEERS LOCAL
UNION NO. 3 AFL-CIO**


Art Frolli
OE-3 Business Representative


Michele Wiginton
Employee Representative


Frank Rua
Employee Representative

May 2010

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Frank BLUE 6am - 6pm Troy RED 6am - 6pm						
Rocky BLACK 6pm - 6am Daymon GREEN 6pm - 6am						
2 Frank Rocky	3 Troy Daymon	4 Troy Daymon	5 Frank Rocky	6 Frank Rocky	7 Troy Daymon	8 Troy Daymon
9 Troy Daymon	10 Frank Rocky	11 Frank Rocky	12 Troy Daymon	13 Troy Daymon	14 Frank Rocky	15 Frank Rocky
16 Frank Rocky	17 Troy Daymon	18 Troy Daymon	19 Frank Rocky	20 Frank Rocky	21 Troy Daymon	22 Troy Daymon
23 Troy Daymon	24 Frank Rocky	25 Frank Rocky	26 Troy Daymon	27 Troy Daymon	28 Frank Rocky	29 Frank Rocky
30 Frank Rocky	31	Schedule starts on Sunday, the 1st day of a 14 day pay cycle, runs for 14 days and then starts over. This is our permanent schedule. If you work on Tuesday you work 6 until 10 and furlough the last 8 hours. Martin covers daytime furloughs and part time employees cover the nights.				

**CONTINUATION OF SIDE LETTER OF AGREEMENT
BETWEEN
CITY OF CORNING
AND
PUBLIC SAFETY UNIT
Re: Furloughs
June 2, 2010**

Furloughs began on October 4, 2009 and would have ended June 30, 2010. The parties have met and agreed to continue the furloughs through June 30, 2011. The City and the Public Safety Unit agree to staff furloughs as follows:

1. All regular full-time members of the Public Safety Unit shall be furloughed eight (8) hours each pay period with a corresponding loss of pay.
2. Furloughs will continue beginning July 1, 2010 and run through June 30, 2011.
3. **The ongoing uncertainty of the City's financial condition makes it impossible to absolutely guarantee that there will be no lay offs during FY 2010-2011. The City therefore agrees as follows:**
 - a. **Should the City lay off any regular full time City employee, furloughs will be discontinued and hours and salaries will be adjusted back to their normal pre-furlough hours and salaries effective the start of the pay period closest to the date the lay off(s) actually occur.**

and

- b. **Regular full time City employees who are actually laid off shall receive one month's severance pay at their normal pre-furlough rate.**
4. All hours worked over seventy-two (72) hours in a pay period will be compensated at the time and one half (1.5) rate.
5. The Public Safety Unit schedule is attached as part of this side letter.
6. All contractual obligations not addressed in this side letter agreement remain in force.

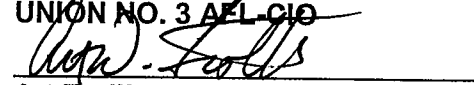
CITY OF CORNING


Stephen J. Kimbrough
City Manager

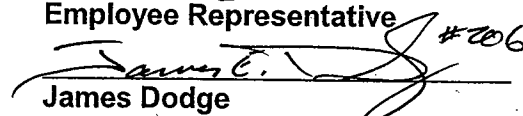

William May
Chief Consultant


Lisa M. Linnet
City Clerk

OPERATING ENGINEERS LOCAL
UNION NO. 3 AFL-CIO


Art Frolli
OE-3 Business Representative


Ralph Schmidt
Employee Representative


James Dodge #206
Employee Representative

SAMPLE PATROL SCHEDULE 72HR

	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	
OFFICER	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	27	27	28	29	30	31	
SCHMIDT		X	X	X	X					X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
STROING		X	X	X	X					X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
ATKINS	X					X	X	X				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
OCHOA	X					X	X	X				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
BASSETT	X	2	2	2	2	X	X	X	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
ANDERSON	X	2	2	2	2	X	X	X	X	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
FEARS	2	X	X	X	X			2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
JOURDAN	2	2	X	X	X	X	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
HILL	3	X	X	X	X	2	3	3	X	X	X	2	2	3	3	X	X	X	2	2	3	3	X	X	X	2	3	3	X	X	X	
WHITE	X	X	X	G	2	2	X	X	X	X	G	2	2	X	X	X	X	X	2	2	X	X	X	X	X	2	2	X	X	X	X	
ALLISON	X	X	X	X				X	X	X	X				X	X	X	X				X	X	X	X	X	X	X	X	X	X	
PRYATEL	X	X						X	X	X	X				X	X	X	X				X	X	X	X	X	X	X	X	X	X	
DODGE	X					X	X	X				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

- LEGEND**
- 1 = 6:00 AM – 6:00 PM
 - 2 = 6:00 PM – 6:00 AM
 - 3 = 3:00 PM – 3:00 AM
 - S = SCHOOL
 - T = K-9 TRAINING
 - W = WORKER'S COMP
 - G = GANG/SPECIAL INVESTIGATIONS
 - D = DETECTIVE
 - X = DAY OFF

ITEM NO: G-3
APPROVE PART-TIME EMPLOYMENT
AGREEMENT FOR CHIEF OF POLICE
WITH ANTHONY F. CARDENAS
JUNE 9, 2010

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
OF THE CITY OF CORNING

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER

STEVE

SUMMARY:

The City Council has approved the City Staff Plan to reduce costs of operations in order to stabilize the City Budget and prevent the loss of valuable City Employees. As part of that plan, Police Chief Tony Cardenas offered to take early retirement and return on a part-time basis as Chief of Police, an action which will save the City approximately \$106,619 in salary and benefits.

WHY GO PART-TIME:

Chief Cardenas has been concerned that the uncertainties of the City Revenues would cause younger Police Officers and Civilian Employees to seek more stable employment elsewhere. As a result, he offered to take early retirement to create a base income and to work part-time on an hourly basis for the City of Corning performing the duties of Police Chief.

Overall, his decision, along with the two other part-time management contracts, the elimination of Recreation and the continuation of the ten percent furloughs of all City Employees will save the City \$541,324 from the General Fund and \$724,560 overall.

THE AGREEMENT:

The Agreement was structured from a model Agreement taken from another City, which identifies the Chief as the "Retired Annuitant". State Law governing the California Public Employees Retirement System, PERS, allows retirees to return to work part-time for up to 960 hours per year.

Article 1 of the Agreement clearly spells out the authority of Chief Cardenas as it currently exists.

Article 2 identifies the services that will be performed as Chief. This will be a three-year contract commencing August 1, 2010 and ending July 4, 2013.

Article 3 explains the compensation. His hourly rate of pay will be \$44.17, which is his current hourly rate of pay. He will receive no Vacation Time, Administrative Leave, nor Sick Leave.

Because the Chief is about 3 to 4 years from his planned retirement date, and too young to be eligible for Medicare, the Agreement provides for him to receive coverage under the City's health insurance program with the City paying one half of the benefit amount paid to fulltime employees. He would continue to receive the group Life Insurance which costs the City \$24.50 per month, and he would continue to participate in the State Disability Insurance Plan, but the City will only pay \$6.60 per month towards such coverage; he will pay the rest. As an employee, the City will continue to pay the employer's share of FICA and Medicare (combined on the attached spreadsheet).

The spreadsheet is included at the end of this report that details the actual costs of each of these benefits. This section also notes that the Chief, as a retiree, will receive a percentage value of his sick leave remaining "on the books" which will be used to pay a portion of his medical insurance premiums. That benefit is explained in detail in Adendum A of this Agreement.

In Article 4, Professional Benefits, the City agrees to continue to pay the membership dues in the International Police Chiefs Association and the California Police Chiefs Association in order to ensure that he can remain current on events affecting law enforcement services. The Agreement also notes that he will receive travel expenses within the limits of the budget for attendance at these meetings. Finally it recognizes that he spends considerable volunteer time within the community for which he pays his own membership dues and expenses.

Article 5 provides for an orderly means of termination should he or the City wish to end his employment. Chief Cardenas is giving up considerable current income and future retirement income in order to enter into this Agreement. In exchange, this Agreement provides that he will be given 180 days notice of the City's intent to terminate his services. This section of the contract also includes a provision to void the 180 day notice should the Chief be found to have committed wrongful acts.

Article 6 treats the Chief like any other employee and indemnifies him in accordance with state law should he or the City be sued for his actions, or actions of his department while carrying out the performance of their duties.

Article 7 recognizes that he will be covered by Workers Compensation which protects both he and the City in the event of his injury or accident.

The terms of the Agreement are standard to an employment agreement. All of the compensation and benefits are within the existing limits set by the City for its employees. Only the provision for 180 days (6 months) notice of termination is unusual to the City. Employment Agreements are becoming standard for management employees in other Cities and Counties, including a contract clause providing for severance pay if terminated. These severance agreements create a limited financial stability for a department manager who has been recruited to work in a new community. This is even more important outside the urban area where department heads and managers must relocate their homes and families in order to take the new job.

RECOMMENDATION:

MAYOR AND COUNCIL RECOGNIZE THE COMMITMENT OF POLICE CHIEF ANTHONY CARDENAS TO THE CITY OF CORNING BY APPROVING THIS EMPLOYMENT AGREEMENT.

EMPLOYEE	**Weighted Avg. Salary	Incentive Increase	Uniform Allowance	Total		FICA/ MEDICARE		ER		EE		Health	Life	SDI	YRLY BENES	Total/Mo	
				Yrly Wages	Total	ER	Pers	EE	Pers	W/O WC	WC						
Kimbrough	\$8,668.00	\$216.70		\$106,616.40	\$8,156.15	\$13,217.24	\$7,463.15	\$79.20	\$42,211.74	\$148,828.14							
Kimbrough new				\$45,000.00	\$3,442.50			\$79.20	\$10,316.70	\$55,316.70							
Kimbrough savings				\$61,616.40	\$4,713.65	\$13,217.24	\$7,463.15	\$0.00	\$31,895.04	\$93,511.44							
Cardenas	\$7,291.00	\$364.55	\$600.00	\$91,866.50	\$7,027.79	\$38,254.36	\$8,321.99	\$79.20	\$66,979.35	\$158,845.95							
Cardenas new				\$42,403.00	\$3,243.83			\$79.20	\$10,118.03	\$52,521.03							
Cardenas savings				\$49,463.50	\$3,783.97	\$38,254.36	\$8,321.99	\$0.00	\$56,861.32	\$106,324.92							
Stouffer	\$6,364.00			\$76,368.00	\$5,842.15	\$9,467.34	\$5,345.76	\$79.20	\$34,030.45	\$110,398.45							
Stouffer new				\$45,000.00	\$0.00			\$0.00	\$0.00	\$45,000.00							
Stouffer savings				\$31,368.00	\$5,842.15	\$9,467.34	\$5,345.76	\$79.20	\$34,030.45	\$65,398.45							
TOTAL SAVINGS				\$142,448.00	\$14,339.77	\$60,938.93	\$21,130.90	\$79.20	\$123,786.81	\$265,234.81							

**Agreement For Temporary Employment Services
Between The City Of Corning And Anthony F. Cardenas**

This Employment Agreement is mutually agreed to between the City of Corning, a municipal corporation, ("City") and Anthony F. Cardenas ("Retired Annuitant") and is entered into this ___ day of June, 2010.

RECITALS

WHEREAS, the City is in financial hardship as a result of the current economic recession and will realize a major cost savings by retaining the Retired Annuitant as Police Chief under the terms of this Agreement; and

WHEREAS, THE City Manager has proposed and City Council approved a Budgetary Plan to reduce operating costs and such Plan includes the reduction of the Police Chief's hours of work to part-time in order to save the city approximately \$106,619 in salary and benefits, and

WHEREAS, effective August 1, 2010, Anthony F. Cardenas will retire from the City of Corning four years earlier than planned thus creating a vacancy in the position of Police Chief of the City, a position which requires specialized skills; and

WHEREAS, Anthony F. Cardenas has performed the duties of Police Chief since June 30, 1992, in a competent and effective manner; and

WHEREAS, California Government Code Section 21224 and CalPERS regulations allow a benefit recipient called a "Retired Annuitant" to work up to 960 hours per fiscal year without penalty; and

WHEREAS, City desires to retain the services of Retired Annuitant to perform the services of Police Chief, and

WHEREAS, the City and Retired Annuitant desire by this Employment Agreement to set forth the terms and conditions of Retired Annuitant's duties and services as Police Chief for a limited period as set forth in this Agreement.

AGREEMENT

In consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

ARTICLE 1: STATUS; LAWS AFFECTING TITLE.

- A. Retired Annuitant, as part-time temporary Police Chief, shall serve with the same employment rights as provided for the position of Police Chief in the California "Peace Officers Bill of Rights", California Government Code Sections 3300-3312.
- B. In addition to those laws affecting the Retired Annuitant, the Retired Annuitant serving as the Police Chief shall have the same powers, rights and responsibilities as a full time Chief of Police.

ARTICLE 2: SERVICES TO BE PERFORMED BY EMPLOYEE.

- A. Retired Annuitant shall perform the functions and duties of the Police Chief as directed by the City manager including those currently in effect or as may hereafter be established by ordinance, resolution, or action of the City Council and in accordance with all applicable requirements of federal, state and local law, to commence on August 1, 2010 and continue through and including July 4, 2013.
- B. Retired Annuitant shall work 960 hours Per Fiscal Year (July 1 through June 30).
- C. Due to the type of work performed by Retired Annuitant, the parties acknowledge that the scheduling of work hours must necessarily be flexible and may be modified as necessary to accommodate the needs of the City and Retired Annuitant. The duties shall be performed at either City offices, or other appropriate locations from which to conduct official City business.
- D. To be free from conflicts during the term of this Employment Agreement, the Retired Annuitant agrees he will not directly or indirectly render any services of a business, commercial, or consulting nature, to any other person or organization, whether for compensation or otherwise, without the prior written consent of the City Council. Retired Annuitant will devote his entire productive time, ability, efforts, and attention to the business of the City during, the term of this Agreement. Notwithstanding the forgoing, the City expressly acknowledges Retired Annuitant's volunteer activities.

ARTICLE 3: COMPENSATION.

Consistent with and as required by Govt. Code Sec. 21224, **City shall pay Retired Annuitant for his services hereunder as Police Chief at the base pay rate of \$44.17 per hour** which is not less than the minimum nor exceeding that paid by the employer for the position. Certain limited benefits will also be provided as listed below. Nothing in the Personnel Rules of the City of Corning or City Code prohibit the City from providing limited benefits to part-time employees with City Council approval.

- A. Payments shall be made in accordance with current City payroll procedures. Retired Annuitant shall submit a timesheet biweekly.
- B. In no event shall Retired Annuitant be compensated for more than nine hundred and sixty (960) hours of service during a fiscal year.
- C. The Retired Annuitant agrees that he shall no longer be entitled to accrue the benefits of Vacation time, Administrative Leave nor Sick Leave.
- D. The Retired Annuitant agrees that during the term of this Agreement, he shall not be entitled to accrue the benefits of Performance Incentive Pay, Vacation time, paid Holidays, Administrative Leave nor Sick Leave.
- E. The City acknowledges that it has a long standing policy of recognizing the value of fringe benefits as a part of the "Total Compensation" of employees. The benefits to be provided to the Retired Annuitant in this agreement include:

1. The City shall allow the Retired Annuitant to participate in the City **group health, dental and optical insurance program**. In order for the Retired Annuitant to be qualified for such insurance program, the City must pay a portion of the employee insurance premium. For the finances of early retirement to work for the Retired Annuitant, the City shall pay fifty percent (50%) of the City contribution for the Retired Annuitant toward such coverage, and any remaining cost shall be bourn by the Retired Annuitant. Currently the monthly value of this benefit to the Retired Annuitant is \$541.75 (50% of \$1083.75 which is the amount allocated to full time employees)
2. As provided for the Police Chief and all retirees in the Management MOU, City shall provide for the application of "**Sick Leave Conversion Upon Retirement**" to be administered as provided in Section 12.10 of the Management MOU. The "Percentage value of employee's accrued Sick Leave" for the Retired Annuitant is shall be calculated at 80% for over 20 years of service to the City. See Addendum A of this agreement for the excerpt from the MOU.
3. The City shall allow the Retired Annuitant to participate in the City **group life insurance** program, and pay the full cost of such premium for \$75,000 Term Life. The current premium is \$24.50 per month, \$294 per year.
4. The City shall allow the Retired Annuitant to participate in the **State Disability Insurance**, but the City will only pay \$6.60 per month toward such coverage and any remaining cost shall be bourn by the Retired Annuitant.
5. As required by law, the City shall pay the employer's share of FICA/MEDICARE.

ARTICLE 4: PROFESSIONAL BENEFITS.

In light of the special skills, knowledge, continuing education requirements, and responsibilities required of Retired Annuitant to perform the function of Police Chief, City shall provide the following benefits to Retired Annuitant for his services hereunder as Police Chief in the manner set forth below:

- A. The City agrees to continue to pay the professional dues for membership in the International Police Chief's Association and the California Police Chief's Association on behalf of the Retired Annuitant in order to provide for the Retired Annuitant's continuation and full participation in national, state, and regional organizations necessary to insure the City's issues and needs are addressed in these forums.
- B. The City agrees to pay, within the limits of the City Budget, the travel and subsistence expenses for the Retired Annuitant to pursue official representation of the City, and for meetings and occasions for continuing education and professional development of the Retired Annuitant so that Retired Annuitant performs his duties at the same level of expertise required, and expected of, Retired Annuitant during his prior years of service to City.
- C. The City recognizes the desirability of representation in and before local civic and other organizations, and the Retired Annuitant is authorized to become a member of civic clubs or

organizations, for which the Retired Annuitant shall continue to pay his own membership dues and expenses.

ARTICLE 5: TERMINATION OF AGREEMENT

- A. If Retired Annuitant voluntarily resigns his position with the City, he shall give sixty days notice in advance, unless the parties agree otherwise.
- B. Removal of the Retired Annuitant from the position of Police Chief shall be done in accordance with the Personnel Rules and Regulations Rule 18, DISCIPLINARY ACTION and Rule 19 APPEAL PROCEDURES. The Retired Annuitant, as Police Chief, shall serve with the same employment rights as provided for the position of Police Chief in the California "Peace Officers Bill of Rights", California Government Code Sections 3300-3312.
- C. Recognizing the Retired Annuitant's twenty (20) years service and commitment to the City and to reducing city operating costs during the current economic recession by retiring four years earlier than his plan, the City agrees that in the event of involuntary termination of Retired Annuitant, City shall give one hundred eighty (180) calendar days notice in advance, unless the parties agree otherwise. This provision for "Involuntary termination" does not apply to Retired Annuitant's death, incapacity due to injury or illness (physical or mental), or dismissal for "dereliction of duty, conviction of a criminal offense involving moral turpitude, gross negligence in failing to perform the duties of his or her office".
 - 1. The City Council may at its discretion chose to terminate the Police Chief immediately and pay the remaining compensation due under this contract, at the rate of pay shown in Article 3 of this contract, either for 180 days or for the remainder of the contract, whichever is less.
 - 2. In the event of Retired Annuitant's incapacity due to injury or illness (physical or mental), all payments, compensation and benefits due Retired Annuitant under this contract shall be discontinued until such time that Retired Annuitant is fit for duty and returns to work. Upon Retired Annuitant's return to work, compensation and benefits shall resume.
 - 3. In the event of Retired Annuitant's resignation, dismissal for "dereliction of duty, conviction of a criminal offense involving moral turpitude, gross negligence in failing to perform the duties of his or her office", or Retired Annuitant's death, this contract shall terminate and no further payments or benefits shall be made to Retired Annuitant.

ARTICLE 6: INDEMNIFICATION.

- A. To the full extent of the law as provided by the California Torts Claims Act (Government Code Section 810 et seq.) and the indemnity provisions of this Agreement, whichever shall provide the greatest protection to the Retired Annuitant, the City shall defend and indemnify the Retired Annuitant against and for all losses sustained by the Retired Annuitant in direct consequences of the discharge of the Retired Annuitant's duties on the City's behalf for the period of the Retired Annuitant's employment.

- B. The City shall defend, save harmless and indemnify the Retired Annuitant against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Retired Annuitant's duties as Police Chief. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.
- C. Whenever the Retired Annuitant shall be sued for damages arising out of the performance of the Retired Annuitant's duties, the City shall provide defense counsel for the Retired Annuitant in such suit and indemnify the Retired Annuitant from any judgment rendered against the Retired Annuitant; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing.
- D. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in the Retired Annuitant's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the Retired Annuitant may have under the law.
- E. The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Retired Annuitant, while acting within the scope of the Retired Annuitant's duties, from all claims, losses and liabilities arising out of or incident to activities were operations performed by or on behalf of the City or any party affiliated with or otherwise claiming under or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the Retired Annuitant.
- F. The City hereby guarantees the performance of this indemnity obligation by the City related legal entity, and shall indemnify and hold the Retired Annuitant harmless against any failure or refusal by City related legal entity to perform its obligations under this section.

ARTICLE 7: WORKER'S COMPENSATION.

Retired Annuitant shall be covered as Police Chief by the City's worker's compensation coverage in the event of an accident or injury which qualifies Retired Annuitant for such coverage under state and federal law.

ARTICLE 8: ENTIRE AGREEMENT.

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

ARTICLE 9: GOVERNING LAW.

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California and leave for any action concerning the terms of this Agreement shall be in the Superior Court of the County of Tehama.

ARTICLE 10: SEVERABILITY.

Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and shall in no way be invalidated, impaired or effected thereby.

ARTICLE 11: ASSIGNMENT.

This Agreement shall not be assignable by Retired Annuitant.

ARTICLE 12: NOTICES. All notices hereunder must be in writing and shall be deemed validly given on the date either personally delivered to the other party or deposited with the United States Postal Service, postage pre-paid and addressed as follows:

City: City Clerk
City of Corning
794 Third Street
Corning, CA 96021

Retired Annuitant: Anthony F. Cardenas
1417 Colusa Street
Corning, CA 96021

IN WITNESS WHEREOF, the parties hereto have caused this Employment Agreement to be executed on the dates hereinafter respectively set forth.

EXECUTED this _____ day of June 2010:

City of Corning

Retired Annuitant

Gary R. Strack
Mayor

Anthony F. Cardenas

Approved as to Form:

Attest:

Michael Fitzpatrick
City Attorney

Lisa Linnet
City Clerk

ADDENDUM A To Agreement For Temporary Employment Services
Between The City Of Corning And Anthony F. Cardenas

Excerpt from Management Memorandum of Understanding in effect at time of this Agreement

12.10 Sick Leave Conversion Upon Retirement. In lieu of a cash out of sick leave, an employee, upon retirement under PERS, may choose as an option to convert a percentage of the dollar value of the sick leave at the employee's current hourly base rate of pay as of the date of retirement, to pay the pre-paid health insurance premium up for a period of time up to age 65 according to the following conversion plan.

<u>Employee's years of service with City</u>	<u>Percentage value of employee's accrued Sick Leave</u>
Through 15 years	50%
16 through 19 years	70%
20 or more years	80%

(a) Following is the procedure to account for the percentage value of converted sick leave. At the written request of the retiring employee, the City Staff will compute the dollar value of the accrued sick leave according to the percentages shown above and maintain an accounting in the employee's name deducting the amount of monthly City health insurance premium from the "balance".

(b) The value of sick leave does not accrue in a cash fund for each employee, therefore no actual funds are held in trust. The City simply agrees to pay the retiree's premium for a period of time until the balance value of the conversion is depleted.

(c) Should a retired employee want to stop their insurance premium payments under the Section, the employee must notify the City Manager in writing, giving the date payments should end, and City Staff will do an accounting of the percent (50%) value provided for in the sick leave payoff provisions of this MOU and the actual dollar amount already paid out. Should this amount still be less than the fifty percent provided for in Section 17.2, the balance will be paid to the employee.

(d) Should a retired employee die prior to fully using this benefit, any dependents covered under the health insurance may, if permitted to continue insurance coverage by the insurance carrier, receive the continuation of this benefit until fully expended. The benefit shall have no cash value to the employee's estate nor can the City accept any claim for payoff by heirs.

(e) Employees not choosing to remain in the City's offered health plan may utilize the benefits set out in these sections to be applied to the cost of a private health plan. The retired employee will be reimbursed, on a quarter year basis, such amounts as provided in these sections, upon submission of a written claim and proof of a paid premium by the retired employee. The form, manner of claim and proof, will be as prescribed by the City.

ITEM NO: G-4
APPROVE AGREEMENT FOR TEMPORARY
CITY MANAGEMENT SERVICES BETWEEN THE
CITY OF CORNING AND STEPHEN J. KIMBROUGH
JUNE 9, 2010

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
OF THE CITY OF CORNING

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER



SUMMARY:

The City Council has approved the City Staff Plan to reduce costs of operations in order to stabilize the City Budget and prevent the loss of valuable City Employees. As part of that plan City Manager Stephen J. Kimbrough has offered to take early retirement and return under an "Agreement for Temporary City Manager Services", an action which will save the City approximately \$93,511 in salary and benefits.

WHY GO PART-TIME:

This concept started with the question: How does the City save big dollars without losing valuable employees? The City government provides services to our customer/owners, but unlike a private sector service business, City income may drop in a recession while service demands continue at the same level. In a recession when many people are out of work, some services like law enforcement and code enforcement will actually increase. This makes the layoff of employees impractical.

The City Council and Management have been concerned that the uncertainties of the City Revenues would cause younger Police Officers and General City Employees to seek more stable employment elsewhere.

The City Manager and the Management Team developed a Plan to reduce costs which included the retirement and part time employment of the City Manager, Police Chief and Planning Director. This action saves the City \$265,235!

The City Manager will take early retirement to create a base income and to work part-time on an hourly basis for the City of Corning.

Overall, his decision, along with the two other part-time management contracts, the elimination of Recreation and the continuation of the ten percent furloughs of all City Employees will save the City \$541,324 from the General Fund and \$724,560 overall.

THE AGREEMENT:

The Agreement was structured like a model Agreement taken from another City, which identifies the City Manager as the "Retired Annuitant". State Law governing the California Public Employees Retirement System, PERS, allows retirees to return to work part-time for up to 960 hours per year. The City Attorney and the Council team including Mayor Gary Strack and Vice Mayor Ross Turner have thoroughly reviewed this Agreement which has been forwarded to the City Council and placed on the City website for public review.

Article 1 of the Agreement clearly spells out the authority of City Manager and reaffirms that the Position is "at-will".

Article 2 identifies the services that will be performed by the City Manager, the yearly hourly limits, and work schedule flexibility. It also clarifies that this will be a three-year contract commencing August 1, 2010 and ending July 4, 2013.

Article 3 explains the compensation. His hourly rate of pay will be \$50, which is his current hourly rate of pay. He will receive no Vacation Time, Administrative Leave, Sick Leave, Performance Incentive Pay or Holiday Pay.

The City Manager is three years from his planned retirement date; the Agreement provides for him to receive coverage under the City's health insurance program with the City paying one half of the benefit amount paid to fulltime employees. He would continue to receive the group Life Insurance which costs the City \$24.50 per month, and he would continue to participate in the State Disability Insurance Plan, but the City will only pay \$6.60 per month towards such coverage; he will pay the rest. As an employee, the City will continue to pay the employers share of FICA and Medicare (combined on the attached spreadsheet that details the actual costs of each of these benefits).

This section also notes that the existing Manager's benefit package includes the provision for the City Manager, as a retiree, to receive a percentage value of his sick leave remaining "on the books" which will be used to pay a portion of his medical insurance premiums. That benefit is explained in detail in Adendum A of this Agreement.

In Article 4, Professional Benefits, the City agrees to continue to pay the membership dues in the International City Management Association and the California City Managers' Foundation in order to ensure that he can remain current on events affecting local government services. The Agreement also notes that he will receive travel expenses within the limits of the budget for attendance at these meetings. Finally it recognizes that he spends considerable volunteer time within the community for which he pays his own membership dues and expenses.

Article 5 provides for an orderly means of termination should he or the City wish to end his employment. Steve Kimbrough is giving up considerable current income and future retirement income in order to enter into this Agreement. In exchange, this Agreement provides that he will be given 180 days notice of the City's intent to terminate his services. This section of the contract also includes a provision to void the 180 day notice should the Manager be found to have committed wrongful acts. This creates stability for both the City and the City Manager.

Article 6 treats the City Manager like any other employee and indemnifies him in accordance with state law should he or the City be sued for his actions, or actions of the City Staff while carrying out the performance of their duties.

Article 7 recognizes that he will be covered by Workers Compensation which protects both he and the City in the event of his injury or accident.

The terms of the Agreement are standard to an employment agreement. All of the compensation and benefits are within the existing limits set by the City for its employees. Only the provision for 180 days (6 months) notice of termination is unusual to the City. Employment Agreements are becoming standard for management employees in other Cities and Counties, including a contract clause providing for severance pay if terminated. These severance agreements create a limited financial stability for a department manager who has been recruited to work in a new community. This is even more important outside the urban area where department heads and managers must relocate their homes and families in order to take the new job.

RECOMMENDATION:

MAYOR AND COUNCIL RECOGNIZE THE COMMITMENT OF CITY MANAGER STEPHEN J. KIMBROUGH TO THE CITY OF CORNING BY APPROVING THIS TEMPORARY CITY MANAGEMENT SERVICES AGREEMENT.

EMPLOYEE	**Weighted Avg. Salary	Incentive Increase	Uniform Allowance	Total Yrly Wages	FICA/ MEDICARE		ER Pers		EE Pers	Health	Life	SDI	YRLY BENES	Total/Mo	
														W/O WC	
Kimbrough	\$8,668.00	\$216.70		\$106,616.40	\$8,156.15	\$13,217.24	\$7,463.15	\$13,002.00	\$294.00	\$79.20	\$42,211.74	\$148,828.14			
Kimbrough new				\$45,000.00	\$3,442.50			\$6,501.00	\$294.00	\$79.20	\$10,316.70	\$55,316.70			
Kimbrough savings				\$61,616.40	\$4,713.65	\$13,217.24	\$7,463.15	\$6,501.00	\$0.00	\$0.00	\$31,895.04	\$93,511.44			
Cardenas	\$7,291.00	\$364.55	\$600.00	\$91,866.60	\$7,027.79	\$38,254.36	\$8,321.99	\$13,002.00	\$294.00	\$79.20	\$66,979.35	\$158,845.95			
Cardenas new				\$42,403.00	\$3,243.83			\$6,501.00	\$294.00	\$79.20	\$10,118.03	\$52,521.03			
Cardenas savings				\$49,463.60	\$3,783.97	\$38,254.36	\$8,321.99	\$6,501.00	\$0.00	\$0.00	\$56,861.32	\$106,324.92			
Stouffer	\$6,364.00			\$76,368.00	\$5,842.15	\$9,467.34	\$5,345.76	\$13,002.00	\$294.00	\$79.20	\$34,030.45	\$110,398.45			
Stouffer new				\$45,000.00	\$0.00			\$0.00	\$0.00	\$0.00	\$0.00	\$45,000.00			
Stouffer savings				\$31,368.00	\$5,842.15	\$9,467.34	\$5,345.76	\$13,002.00	\$294.00	\$79.20	\$34,030.45	\$65,398.45			
TOTAL SAVINGS				\$142,448.00	\$14,339.77	\$60,938.93	\$21,130.90	\$26,004.00	\$294.00	\$79.20	\$122,786.81	\$265,234.81			

**Agreement For Temporary Employment Services
Between The City Of Corning And Stephen J. Kimbrough**

This Employment Agreement is mutually agreed to between the City of Corning, a municipal corporation, ("City") and Stephen J. Kimbrough ("Retired Annuitant") and is entered into this ____ day of June, 2010.

RECITALS

WHEREAS, the City is in financial hardship as a result of the current economic recession and will realize a major cost savings by retaining the Retired Annuitant as City Manager under the terms of this Agreement; and

WHEREAS, THE City Manager has proposed and City Council approved a Budgetary Plan to reduce operating costs and such Plan includes the reduction of the City Manager's hours of work to part-time in order to save the city approximately \$93,805 in salary and benefits, and

WHEREAS, effective August 1, 2010, Stephen J. Kimbrough will retire from the City of Corning three years earlier than planned thus creating a vacancy in the position of City Manager of the City, a position which requires specialized skills; and

WHEREAS, Stephen J. Kimbrough has performed the duties of City Manager since February 24, 1993, in a competent and effective manner; and

WHEREAS, California Government Code Section 21224 and CalPERS regulations allow a benefit recipient called a "Retired Annuitant" to work up to 960 hours per fiscal year without penalty; and

WHEREAS, City desires to retain the services of Retired Annuitant to perform the services of City Manager, and if the City so desires, to assist in the recruitment process of a new City Manager at some point in the future; and

WHEREAS, the City and Retired Annuitant desire by this Employment Agreement to set forth the terms and conditions of Retired Annuitant's duties and services as City Manager for an interim period as set forth in this Agreement.

AGREEMENT

In consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

ARTICLE 1: STATUS; LAWS AFFECTING TITLE.

- A. Retired Annuitant, as City Manager, shall serve at the pleasure of, and shall work for, the City Council as provided for in Chapter 2.44 of the Corning Municipal Code.
- B. In addition to those laws affecting the Retired Annuitant, the Retired Annuitant serving as

the City Manager shall have the same powers, rights and responsibilities as provided for in Chapter 2.44 of the Corning Municipal Code.

- C. City Code Section 2.44.110 provides the authority for the City Council to enter into this Agreement.
- D. The City Council, beginning with the initial employment of the Retired Annuitant in 1993, has provided the employment benefit package enumerated in the Management Memorandum of Understanding (MOU) to the City Manager.

ARTICLE 2: SERVICES TO BE PERFORMED BY EMPLOYEE.

- A. Retired Annuitant shall perform the functions and duties of the City Manager as currently in effect or as may hereafter be established by ordinance, resolution, or action of the City Council and in accordance with all applicable requirements of federal, state and local law, to commence on August 1, 2010 and continue through and including July 4, 2013.
- B. Retired Annuitant shall work 900 hours Per Fiscal Year (July 1 through June 30), provided, however, that the number of hours for each Fiscal Year may be increased to a maximum of 960 by mutual agreement of both parties.
- C. Due to the type of work performed by Retired Annuitant, the parties acknowledge that the scheduling of work hours must necessarily be flexible and may be modified as necessary to accommodate the needs of the City and Retired Annuitant. The duties shall be performed at either City offices, or other appropriate locations from which to conduct official City business.
- D. To be free from conflicts during the term of this Employment Agreement, the Retired Annuitant agrees he will not directly or indirectly render any services of a business, commercial, or consulting nature, to any other person or organization, whether for compensation or otherwise, without the prior written consent of the City Council. Retired Annuitant will devote his entire productive time, ability, efforts, and attention to the business of the City during, the term of this Agreement. Notwithstanding the forgoing, the City expressly acknowledges Retired Annuitant's volunteer activities.

ARTICLE 3: COMPENSATION.

Consistent with and as required by Govt. Code Sec. 21224, **City shall pay Retired Annuitant for his services hereunder as City Manager at the base pay rate of \$50 per hour** which is not less than the minimum nor exceeding that paid by the employer for the position. Certain limited benefits will also be provided as listed below. Nothing in the Personnel Rules of the City of Corning or City Code prohibit the City from providing limited benefits to part-time employees with City Council approval.

- A. Payments shall be made in accordance with current City payroll procedures. Retired Annuitant shall submit a timesheet biweekly reflecting hours worked.
- B. In no event shall Retired Annuitant be compensated for more than nine hundred and sixty (960) hours of service during a fiscal year.

- C. The Retired Annuitant agrees that during the term of this Agreement, he shall not be entitled to accrue the benefits of Performance Incentive Pay, Vacation time, paid Holidays, Administrative Leave nor Sick Leave.
- D. The City acknowledges that it has a long standing policy of recognizing the value of fringe benefits as a part of the "Total Compensation" of employees. The benefits to be provided to the Retired Annuitant in this agreement include:
1. The City shall allow the Retired Annuitant to participate in the City **group health, dental and optical insurance program**. In order for the Retired Annuitant to be qualified for such insurance program, the City must pay a portion of the employee insurance premium. For the finances of early retirement to work for the Retired Annuitant, the City shall pay fifty percent (50%) of the City contribution for the Retired Annuitant toward such coverage, and any remaining cost shall be bourn by the Retired Annuitant. Currently the monthly value of this benefit to the Retired Annuitant is \$541.75 (50% of \$1083.75 which is the amount allocated to full time employees)
 2. The Retired Annuitant will be the first employee eligible for Medicare under the City Management Benefit Plan contained in the Management Unit MOU. The retired Annuitant will be replacing the City insurance policy with the Medicare coverage on January 1, 2011. The City shall allow the monthly reimbursement for Medicare Supplement Coverage from the amount provided in Section D-1 above. To receive reimbursement, the Retired Annuitant shall turn in evidence of the insurance payment. Any unused portion of the insurance contribution shall be placed by the City in the Retired Annuitant's City "457 Plan" according to current administrative practice.
 3. As provided for the City Manager and all retirees in the Management MOU, City shall provide for the application of "**Sick Leave Conversion Upon Retirement**" to be administered as provided in Section 12.10 of the Management MOU. The "Percentage value of employee's accrued Sick Leave" for the Retired Annuitant is shall be calculated at 70% for over 16 years of service to the City. See Addendum A of this agreement for the excerpt from the MOU.
 4. The City shall allow the Retired Annuitant to participate in the City **group life insurance** program, and pay the full cost of such premium for \$75,000 Term Life. The current premium is \$24.50 per month, \$294 per year.
 5. The City shall allow the Retired Annuitant to participate in the **State Disability Insurance**, but the City will only pay \$6.60 per month toward such coverage and any remaining cost shall be bourn by the Retired Annuitant.
 6. As required by law, the City shall pay the employer's share of FICA/MEDICARE.

ARTICLE 4: PROFESSIONAL BENEFITS.

In light of the special skills, knowledge, continuing education requirements, and responsibilities required of Retired Annuitant to perform the function of City Manager, City shall provide the following benefits to Retired Annuitant for his services hereunder as City Manager in the manner set forth below:

- A. The City agrees to continue to pay the professional dues for membership in the International City Management Association and the California City Managers' Foundation on behalf of the Retired Annuitant in order to provide for the Retired Annuitant's continuation and full participation in national, state, and regional organizations necessary to insure the City's issues and needs are addressed in these forums.
- B. The City agrees to pay, within the limits of the City Budget, the travel and subsistence expenses for the Retired Annuitant to pursue official representation of the City, and for meetings and occasions for continuing education and professional development of the Retired Annuitant so that Retired Annuitant performs his duties at the same level of expertise required, and expected of, Retired Annuitant during his prior years of service to City.
- C. The City recognizes the desirability of representation in and before local civic and other organizations, and the Retired Annuitant is authorized to become a member of civic clubs or organizations, for which the Retired Annuitant shall continue to pay his own membership dues and expenses.

ARTICLE 5: TERMINATION OF AGREEMENT

- A. If Retired Annuitant voluntarily resigns his position with the City, he shall give sixty days notice in advance, unless the parties agree otherwise.
- B. Removal of the Retired Annuitant from the position of City Manager shall be done in accordance with the provisions of Section 2.44.040 of the Corning Municipal Code and with the additional provisions as provided for in this contract. The City Code states that "Removal of the city manager shall be only by a vote of at least three members of the city council, and shall be subject to the following provisions."
 - 1. "The city manager may be removed at any time for cause (i.e., dereliction of duty, conviction of a criminal offense involving moral turpitude, gross negligence in failing to perform the duties of his or her office). Except within ninety days next succeeding any general municipal election held in the city, at which election a new mayor or member of the city council is elected, the city manager may be removed at any time without cause."
 - 2. "If the removal of the city manager is for cause, the removal shall be effective immediately, or at such other time thereafter as the city council may determine."
 - 3. "If the removal is not for cause, it shall be effective thirty days thereafter, or at such later date as may be determined by the city council."

4. "If the removal of the city manager is without cause, the city council may, in its sole option and discretion, elect to remove all of the manager's duties and responsibilities immediately, in which event the city manager shall immediately surrender his or her office. However, the city manager shall still be paid a minimum of thirty days' salary, notwithstanding the removal of his or her powers and duties. This salary shall be paid on the normal pay days of the city employees and on the last day of the period of employment, unless the city council, in its discretion, otherwise orders."
- C. Recognizing the Retired Annuitant's seventeen (17) years service and commitment to the City and to reducing city operating costs during the current economic recession by retiring three years earlier than his plan, the City agrees that in the event of involuntary termination of Retired Annuitant, City shall give one hundred eighty (180) calendar days notice in advance, unless the parties agree otherwise. This provision for "Involuntary termination" does not apply to Retired Annuitant's death, incapacity due to injury or illness (physical or mental), or dismissal for "dereliction of duty, conviction of a criminal offense involving moral turpitude, gross negligence in failing to perform the duties of his or her office".
1. The City Council may at its discretion chose to terminate the City Manager immediately and pay the remaining compensation due under this contract, at the rate of pay shown in Article 3 of this contract, either for 180 days or for the remainder of the contract, whichever is less.
 2. In the event of Retired Annuitant's incapacity due to injury or illness (physical or mental), all payments, compensation and benefits due Retired Annuitant under this contract shall be discontinued until such time that Retired Annuitant is fit for duty and returns to work. Upon Retired Annuitant's return to work, compensation and benefits shall resume.
 3. In the event of Retired Annuitant's resignation, dismissal for "dereliction of duty, conviction of a criminal offense involving moral turpitude, gross negligence in failing to perform the duties of his or her office", or Retired Annuitant's death, this contract shall terminate and no further payments or benefits shall be made to Retired Annuitant.

ARTICLE 6: INDEMNIFICATION.

- A. To the full extent of the law as provided by the California Torts Claims Act (Government Code Section 810 et seq.) and the indemnity provisions of this Agreement, whichever shall provide the greatest protection to the Retired Annuitant, the City shall defend and indemnify the Retired Annuitant against and for all losses sustained by the Retired Annuitant in direct consequences of the discharge of the Retired Annuitant's duties on the City's behalf for the period of the Retired Annuitant's employment.
- B. The City shall defend, save harmless and indemnify the Retired Annuitant against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Retired Annuitant's duties as City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

- C. Whenever the Retired Annuitant shall be sued for damages arising out of the performance of the Retired Annuitant's duties, the City shall provide defense counsel for the Retired Annuitant in such suit and indemnify the Retired Annuitant from any judgment rendered against the Retired Annuitant; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing.
- D. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in the Retired Annuitant's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the Retired Annuitant may have under the law.
- E. The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Retired Annuitant, while acting within the scope of the Retired Annuitant's duties, from all claims, losses and liabilities arising out of or incident to activities were operations performed by or on behalf of the City or any party affiliated with or otherwise claiming under or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the Retired Annuitant.
- F. The City hereby guarantees the performance of this indemnity obligation by the City related legal entity, and shall indemnify and hold the Retired Annuitant harmless against any failure or refusal by City related legal entity to perform its obligations under this section.

ARTICLE 7: WORKER'S COMPENSATION.

Retired Annuitant shall be covered as City Manager by the City's worker's compensation coverage in the event of an accident or injury which qualifies Retired Annuitant for such coverage under state and federal law.

ARTICLE 8: ENTIRE AGREEMENT.

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

ARTICLE 9: GOVERNING LAW.

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California and leave for any action concerning the terms of this Agreement shall be in the Superior Court of the County of Tehama.

ARTICLE 10: SEVERABILITY.

Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and shall in no way be invalidated, impaired or effected thereby.

ARTICLE 11: ASSIGNMENT.

This Agreement shall not be assignable by Retired Annuitant.

ARTICLE 12: NOTICES. All notices hereunder must be in writing and shall be deemed validly given on the date either personally delivered to the other party or deposited with the United States Postal Service, postage pre-paid and addressed as follows:

City: City Clerk
City of Corning
794 Third Street
Corning, CA 96021

Retired Annuitant: Stephen J. Kimbrough
712 Stanmar Drive
Corning, CA 96021

IN WITNESS WHEREOF, the parties hereto have caused this Employment Agreement to be executed on the dates hereinafter respectively set forth.

EXECUTED this _____ day of June 2010:

City of Corning

Retired Annuitant

Gary R. Strack
Mayor

Stephen J. Kimbrough

Approved as to Form:

Attest:

Michael Fitzpatrick
City Attorney

Lisa Linnet
City Clerk

ADDENDUM A To Agreement For Temporary Employment Services
Between The City Of Corning And Stephen J. Kimbrough

Excerpt from Management Memorandum of Understanding in effect at time of this Agreement

12.10 Sick Leave Conversion Upon Retirement. In lieu of a cash out of sick leave, an employee, upon retirement under PERS, may choose as an option to convert a percentage of the dollar value of the sick leave at the employee's current hourly base rate of pay as of the date of retirement, to pay the pre-paid health insurance premium up for a period of time up to age 65 according to the following conversion plan.

<u>Employee's years of service with City</u>	<u>Percentage value of employee's accrued Sick Leave</u>
Through 15 years	50%
16 through 19 years	70%
20 or more years	80%

(a) Following is the procedure to account for the percentage value of converted sick leave. At the written request of the retiring employee, the City Staff will compute the dollar value of the accrued sick leave according to the percentages shown above and maintain an accounting in the employee's name deducting the amount of monthly City health insurance premium from the "balance".

(b) The value of sick leave does not accrue in a cash fund for each employee, therefore no actual funds are held in trust. The City simply agrees to pay the retiree's premium for a period of time until the balance value of the conversion is depleted.

(c) Should a retired employee want to stop their insurance premium payments under the Section, the employee must notify the City Manager in writing, giving the date payments should end, and City Staff will do an accounting of the percent (50%) value provided for in the sick leave payoff provisions of this MOU and the actual dollar amount already paid out. Should this amount still be less than the fifty percent provided for in Section 17.2, the balance will be paid to the employee.

(d) Should a retired employee die prior to fully using this benefit, any dependents covered under the health insurance may, if permitted to continue insurance coverage by the insurance carrier, receive the continuation of this benefit until fully expended. The benefit shall have no cash value to the employee's estate nor can the City accept any claim for payoff by heirs.

(e) Employees not choosing to remain in the City's offered health plan may utilize the benefits set out in these sections to be applied to the cost of a private health plan. The retired employee will be reimbursed, on a quarter year basis, such amounts as provided in these sections, upon submission of a written claim and proof of a paid premium by the retired employee. The form, manner of claim and proof, will be as prescribed by the City.