

AGENDA
SPECIAL CITY COUNCIL MEETING
CITY OF BANNING
BANNING, CALIFORNIA

June 28, 2016
Immediately following the
Special Meeting

Banning Civic Center
Council Chambers
99 E. Ramsey St.

Per City Council Resolution No. 2016-44 matters taken up by the Council before 10:00 p.m. may be concluded, but no new matters shall be taken up after 10:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

I. CALL TO ORDER

- Roll Call – Councilmembers Franklin, Miller, Moyer, Peterson, Mayor Welch

II. PUBLIC COMMENTS - *On Items Not on the Agenda*

A five-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

III. REPORTS

1. Consideration of Interim City Attorney Services by the law firm of Jenkins & Hogin, LLP and approval of a Professional Services Agreement with said firm by adoption of Resolution No. 2016-56 1
(Staff Report- Michael Rock, City Manager)

Recommendation: Consideration of interim city attorney services by the law firm of Jenkins & Hogin, LLP, who shall assign John C. Cotti as Interim City Attorney, adoption of Resolution No. 2016-56 and approval of a Professional Services Agreement.

IV. ADJOURNMENT

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

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

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

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



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Rochelle Clayton, Deputy City Manager

MEETING DATE: June 28, 2016

SUBJECT: Consideration of Interim City Attorney Services by the law firm of Jenkins & Hogin, LLP and approval of a Professional Services Agreement with said firm by adoption of Resolution No. 2016-56

RECOMMENDATION:

Consideration of interim city attorney services by the law firm of Jenkins & Hogin, LLP, who shall assign John C. Cotti as Interim City Attorney, adoption of Resolution No. 2016-56 and approval of a Professional Services Agreement.

BACKGROUND:

During the budget adoption process, staff recommended to Council that the City hire a permanent full-time in-house City Attorney which will be a significant cost savings to the City for attorney services. During recruitment, the City will require interim city attorney services. The duration of recruitment is estimated to take three months.

FISCAL IMPACT:

No additional fiscal impact to the budget. It is estimated to cost up to \$125,000 based on the three month recruitment time, of which is already budgeted.

OPTIONS:

1. Adopt Resolution No. 2016-56 and approve the Professional Services Agreement with Jenkins & Hogin, LLP, appointing John C. Cotti as the Interim City Attorney
2. Provide direction to staff on interim attorney services

ATTACHMENTS:

1. Resolution No. 2016-56
 - a. Exhibit A – Professional Services Agreement with Jenkins & Hogen, LLP

Prepared by:



Rochelle Clayton
Deputy City Manager

Approved by:



Michael Rock
City Manager

ATTACHMENT 1
Resolution No. 2016-62

RESOLUTION 2016-56

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPOINTING THE INTERIM CITY ATTORNEY

WHEREAS, as of June 28, 2016, the City will be without the service of a City Attorney; and

WHEREAS, it is necessary that a City Attorney be appointed immediately in order that the affairs of the City may be properly administered.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1: John C. Cotti of Jenkins & Hogin, LLP, is hereby appointed Interim City Attorney of the City of Banning and General Counsel of the Banning Utility Authority and the Banning Successor Agency to serve at the pleasure of the City Council.

SECTION 2: The City Council hereby approves and authorizes the Mayor to execute the Legal Representation Professional Services Agreement with Jenkins & Hogin, LLP attached hereto as Exhibit "A" and incorporated herin by this reference.

PASSED, ADOPTED AND APPROVED this 28th day of June, 2016.

Arthur L, Welch, Mayor
City of Banning, California

ATTEST:

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

APPROVED AS TO FORM
AND LEGAL CONTENT:

City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016- was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of April, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT “A”

AGREEMENT FOR LEGAL SERVICES FOR THE CITY OF BANNING

This Agreement is made and entered into this 28th day of June, 2016, by and between the law firm of Jenkins & Hogen, LLP (hereinafter "the Firm"), and the City of Banning, a California municipal corporation (hereinafter "the City").

R E C I T A L S:

A. The City desires to retain the Firm to discharge the duties of the office of Interim City Attorney and to provide other legal services as requested.

B. The attorneys of the Firm are duly licensed under the laws of the State of California and are fully qualified to discharge the duties of the office of Interim City Attorney and to provide the legal services contemplated by this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services.

The Firm shall discharge the duties of the offices of Interim City Attorney of the City and shall use its best efforts to provide legal services in a competent and professional manner. The Firm shall provide all services to the City of the kind and nature typically provided by an in-house City Attorney's office, including litigation services, unless specifically exempted by this Agreement or otherwise determined by the City Council. The legal services to be provided by the Firm shall consist of those set forth in Exhibit "A" attached hereto and shall be billed at the rates set forth therein or as otherwise agreed by the parties. Except where conflict of interest rules require otherwise, the Firm shall supervise the activities of all other counsel retained by or for the City and shall review their invoices prior to payment.

2. Designation of Interim City Attorney.

John C. Cotti is designated as Interim City Attorney for the City. The parties understand and agree that the Firm may, from time to time, utilize other attorneys within the Firm to assist Mr. Cotti in the performance of this Agreement. The designation set forth in this paragraph may be changed by mutual agreement without a formal amendment to this Agreement.

3. Billing Procedures and Monthly Statements.

3.1 Payment for all services set forth in Exhibit A shall be made on or before the last day of each month for services rendered during the preceding month.

The Firm shall submit to the City, within 10 days after the end of each calendar month, a general statement of professional services provided.

3.2 The Firm will not bill the City for routine copying, telephone, mileage, facsimile or word processing or electronic research within the Firm's current Westlaw Plan, which shall include California statutes and case and Ninth Circuit cases. The Firm will bill the City, without any mark-up, actual expenses for out-of-contract electronic legal research, parking, filing fees, transcripts, delivery charges, extraordinary copying and similar out-of-pocket expenses. These items will be separately designated on the Firm's monthly statements as "disbursements" and will be billed in addition to the fees for professional services.

3.3 Time will be charged by the Firm in increments of 1/10th of an hour (*i.e.* six-minute units).

4. Term of the Agreement.

This Agreement shall commence as of June __, 2016 and shall be and remain in full force and effect until terminated in accordance with the provisions of Section 6 hereof.

5. Resolution of Fee Disputes.

The City is entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles pursuant to the arbitration rules of the Riverside County Bar Association for legal fee disputes. In the event that City chooses not to utilize the Riverside County Bar Association's arbitration procedures, City agrees that all disputes regarding the professional services rendered or fees charged by the Firm shall be submitted to binding arbitration in Riverside to be conducted by the American Arbitration Association in accordance with its commercial arbitration rules.

6. Termination of the Agreement.

The City may terminate this Agreement, with or without cause, upon written notice to the Firm. The Firm may terminate, with or without cause, on ninety (90) days written notice to the City. In either event, the City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record. The Firm agrees to cooperate fully in any such transition, including the transfer of files. Notwithstanding the termination of the Firm's services, City will remain obligated to pay to the Firm all fees and costs incurred prior to termination.

7. Conflict of Interest.

The Firm represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any legal representation which is in conflict with the legal services to be provided the City under this Agreement.

The Firm represents that no City employee or official other than the members of the Firm has a material financial interest in the Firm. During the term of this Agreement and/or as a result of being awarded this contract, the Firm shall not offer, encourage or accept any financial interest in the Firm's business from any City employee or official.

8. Files.

All legal files of the Firm pertaining to the City shall be and remain the property of City. The Firm shall control the physical location of such legal files in a secure and accessible location during the term of this Agreement and be entitled to retain copies of such files, at the Firm's expense, upon termination of this Agreement.

9. Modifications to the Agreement.

Unless otherwise provided for in this Agreement, modifications relating to the nature, extent or duration of the Firm's professional services to be rendered hereunder shall require the written approval of the parties. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by the Firm and paid by the City.

10. Nondiscrimination.

In the performance of this Agreement, the Firm shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, sexual orientation or medical condition. The Firm shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, sexual orientation or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training.

11. Assignment and Delegation.

This Agreement contemplates the personal professional services of the Firm and it shall not be assigned or delegated without the prior written consent of the City. The Firm shall supervise delegated work, except where precluded from doing so by virtue of a conflict of interest and where otherwise agreed to by the parties hereto.

12. Insurance.

12.1 The Firm shall obtain and maintain in full force and effect a professional liability insurance policy which provides coverage in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate. Said insurance policy shall provide coverage to the City for any damages or losses suffered by the City as a result of any error or omission or neglect by the Firm which arises out of the professional services required by this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by the Firm.

12.2 The Firm shall, if and as prescribed by law, obtain and maintain Workers' Compensation insurance in accordance with Section 3700 of the California Labor Code.

12.3 The Firm agrees to notify City in the event the limits of its insurance should fall below the coverage stated in this paragraph or if the insurance policies noted here are allowed to lapse and substitute insurance is not obtained.

13. Indemnification.

13.1 The Firm agrees to indemnify, hold harmless and defend City and City Council, its officers, employees, agents and volunteers, from any and all liability or financial loss including legal expenses and costs of expert witnesses and consultants resulting from any suits, claims, losses or actions brought by any person or persons, by reasons of injury and arising directly or indirectly from the negligent or wrongful activities and operations of the Firm, including its officers, agents, employees, or subcontractors in the performance of this Agreement.

13.2 Notwithstanding the provisions of paragraph 13.1, City acknowledges its statutory obligation under California Government Code section 825 *et seq.* to defend and indemnify the Interim City Attorney and his assistants and deputies from and against all and any claims, actions and liabilities arising from work performed within the scope of their duties under this Agreement.

13.3 The provisions of this Paragraph 13 shall survive the termination of this Agreement.

14. Legal construction.

14.1 This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

14.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

14.3 The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

14.4 Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

14.5 The Firm shall for all purposes be deemed an independent contractor to the City.

15. Notices.

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: City Manager
City of Banning
99 E. Ramsey Street
Banning, CA 92220

TO FIRM: Christi Hogin
Jenkins & Hogin, LLP
1230 Rosecrans Avenue Suite 110
Manhattan Beach, CA 90266
TEL (310) 643-8448
FAX (310) 643-8441

16. Warranty of Authorized Signatures.

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

17. Entire Agreement.

This Agreement, together with any written modification pursuant to Paragraph 9 above, shall constitute the full and complete agreement and understanding of the parties and shall be deemed to supersede all other written or oral statements of either party relating to the subject matter hereof.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have caused this Agreement to be executed as of the dates indicated below.

Dated: _____

CITY OF BANNING

By _____
Mayor

ATTEST:

CITY CLERK
(Seal)

Dated: _____

JENKINS & HOGIN, LLP
A Limited Liability Partnership

By _____
CHRISTI HOGIN

Attachments: Exhibit A Scope of services and applicable bill rates
Exhibit B Oath of Office

EXHIBIT "A"

SCOPE OF SERVICES AND APPLICABLE BILLING RATES

I. GENERAL LEGAL SERVICES

A. The general legal services to be provided by the Firm to the City shall include, without limitation, the following:

1. Provide routine legal assistance, advice and consultation to the City Council and to City staff relating to land use, CEQA, general municipal law issues, general and routine public employee relations issues, interpretation of the Municipal Code, potential tort liability, risk management, and other legal issues
2. Prepare and review legal opinions, ordinances, resolutions, agreements and related documents
3. Review draft environmental impact reports and related environmental documents
4. Prepare for and attend all regular, special or adjourned meetings of the City Council and the Planning Commission
5. Telephone consultations with Councilmembers and staff
6. Coordination with and supervision of outside counsel
7. Advice relating to implementation of the City's NPDES/stormwater permit
8. Office conferences and criminal prosecution services to secure code compliance

B. The general legal services specified in paragraph A above and all other transactional services shall be provided at the rate of \$200 per hour.

II. LITIGATION SERVICES

The litigation services performed under this Agreement shall be provided at the hourly rate of \$325 per hour for lawyers with more than 15 years of experience, \$275 per hour for lawyers with 10 to 15 years of experience and \$225 for lawyers with less than 10 years of experience.

Exhibit "B"

OATH OF OFFICE
California Constitution Article 20, Section 3

I, John C. Cotti, do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

John C. Cotti
Effective date: