

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

May 25, 2010  
6:30 p.m.

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

*Per City Council Resolution No. 1997-33 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.*

**I. CALL TO ORDER**

- Invocation – Pastor George Rosemier, Banning United Methodist Church
- Pledge of Allegiance
- Roll Call – Council Members Franklin, Hanna, Machisic, Robinson, Mayor Botts

**II. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS**

**PUBLIC COMMENTS – On Items Not on the Agenda**

*A three-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. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to “share” his/her three 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.*

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

**III. CONSENT ITEMS**

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

**Motion: That the City Council approve Consent Item 1 through 2  
Items to be pulled \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_ for discussion.**

- |    |   |   |
|----|---|---|
| 1. | Approval of Minutes – Regular Meeting – 5/11/10. .... | 1 |
| 2. | Report of Investments for March 2010 .....            | 8 |

- Open for Public Comments
- Make Motion

*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.*

#### IV. PUBLIC HEARINGS

1. Resolution No. 2010-34, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance district No. 1 for Fiscal Year 2010/11.  
Staff Report ..... 18  
Recommendation: **1) That the City Council adopt Resolution No. 2010-34, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2010/11," pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code; and II) Authorizing and directing the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office.**
  
2. Resolution No. 2010-35, 2010 Edward Byrne Memorial Justice Assistance Grant.  
Staff Report ..... 29  
Recommendation: **1) That the City Council adopt Resolution No. 2010-35, Authorizing the Acceptance of the 2010 U. S. Department of Justice Edward Byrne Memorial Justice Assistance Grant in the Amount of \$20,986.00 to be Used for Police Department Overtime for police officers participating in Banning Police Activities League (BPAL) activities.**
  
3. Ordinance No. 1423 – An Interim Ordinance Extending for Ten Months and Fifteen Days Interim Urgency Ordinance No. 1422, (Temporary Moratorium on the Permitting of Tattoo & Piercing, Fortune Telling, Push-Cart Vendors, and Hookah (Smoking) Lounge Land Uses Pending the Review and Possible Amendment of Zoning Regulations Applicable to Such Uses).  
Staff Report ..... 32

**Mayor asks the City Clerk to read the title of Ordinance No. 1423:**

*"An Interim Urgency Ordinance of the City of Banning, Extending for Ten Months and Fifteen Days Interim Urgency Ordinance No. 1422 that Established a Temporary Moratorium on the Permitting of Tattoo & Piercing, Fortune Telling, Push-Cart Vendors, and Hookah (Smoking) Lounge Land Uses Pending the Review and Possible Amendment of Zoning Regulations Applicable to Such Uses.*

**Motion: I move to waive further reading of Ordinance No. 1423**

(Requires a majority vote of Council)

**Motion: I move that Ordinance No. 1423 be adopted.**

**V. REPORTS OF OFFICERS**

1. Resolution No. 2010-22, Approval of the Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement.  
Staff Report ..... 49  
Recommendation: **That the City Council adopt Resolution No. 2010-22, Approving the Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement, attached herewith as Exhibit “A” and “B” respectively.**
  
2. Resolution No. 2010-23, Approval of the Net Metering Surplus Electric Rate Schedule and the Revised Interconnection Agreement for Net Energy Metering.  
Staff Report ..... 71  
Recommendation: **That the City Council adopt Resolution No. 2010-23, Approving the Net Metering Surplus Electric Rate Schedule, attached herewith as Exhibit “A”, and the Revised Interconnection Agreement for Net Energy Metering (Lease), attached herewith as Exhibit “B” and “C” respectively.**
  
3. City Council Adoption of Resolution No. 2010-37, In Accordance with Banning Municipal Code City Council Chapter 2.04, Section 2.04.010, Setting Its City Council Meeting Time and Adoption of Resolution No. 2010-38, Establishing Time Limits for Conduct of Business at City Council Meetings and Repealing Resolution No. 1977.33.  
Staff Report ..... 95  
Recommendations:
  - I. **That the City Council adopt Resolution No. 2010-37, Addressing Municipal Code Chapter 2.04, Section 2.04.010, Setting Its City Council Meeting Time.**
  - II. **That the City Council adopt Resolution No. 2010-38, Establishing Time Limits for Conduct of Business at City Council Meetings and Repealing Resolution No. 1997-33.**

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

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

## **VII. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items –

1. Schedule Meetings with Our State and County Elected Officials
2. Set New Date for Joint Meeting with Banning School Board (6/10)
3. Massage Ordinance (ETA 6/8/10)
4. Consider Sister City Relationship with Township in Haiti

## **VIII. CLOSED SESSION**

1. That the City Council will meet in closed session pursuant to Government Code Section 54956.8 to give negotiations with Banning Heights Mutual Water Company, San Gorgonio Pass Water Agency and Southern California Edison Concerning the purchase/sale/exchange/lease of the property located at Ray Wood Flats and also property owned by the City of Banning in Burnt Canyon.
  2. That the City Council will meeting in closed session in regards to Conference with Labor Negotiators pursuant to Government Code Section 54957.6. City is represented by City Manager, City Attorney and Human Resources Director. Negotiations are with International Brotherhood of Electrical Workers (IBEW) – Utility Unit, International Brotherhood of Electrical Workers (IBEW) – General Unit, Banning Police Officers Association (BPOA), and City of Banning Association of Managers (CBAM).
- A. Opportunity for Public to Address Closed Session Items.  
B. Convene Closed Session

## **IX. ADJOURNMENT**

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 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 and Council. 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 three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to “share” his/her three 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 (909) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

05/11/10  
REGULAR MEETING

A regular meeting of the City Council and a Joint Meeting of the City Council and Banning Utility Authority was called to order by Mayor Botts on May 11, 2010 at 9:37 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Franklin  
Councilmember Hanna  
Councilmember Machisic  
Councilmember Robinson  
Mayor Botts

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager  
David J. Aleshire, City Attorney  
Duane Burk, Public Works Director  
Leonard Purvis, Police Chief  
Dr. John McQuown, City Treasurer  
Marie A. Calderon, City Clerk

The invocation was given by Pastor Steve Braun of the Banning Foursquare Church. Mayor Botts invited the audience to join him in the Pledge of Allegiance to the Flag.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

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

Matthew Clarke, 1036 Charles Street said that at the past Council Meeting there was an item taken off the agenda in dealing with the purchase of a new vehicle and part of the explanation was that the Electric Department had two vehicles that were looking to go to some form of salvage or be retired. He said that H.E.L.P is looking for something just like that but something that runs that could be used to deliver packages and food and if the City has a vehicle that is looking to be retired, that would be a good place to retire it to.

Mayor Botts said that there is an addition to the agenda under Reports of Officers and this will be an update on the Animal Control Shelter.

APPOINTMENTS

1. Appointment of 2x2 Committee re. Banning Heights Mutual Water Co.

Mayor Botts said that the Banning Heights Mutual Water Company have mentioned to him and staff that they are ready to move forward and want to start negotiating their multiple issues concerning a four-party agreement that they need to sign in order to move forward and this is in regards to the flume and so forth. He would like to appoint a two by two committee to work with staff and that would be Council Members Machisic and Hanna as the two Council representatives.

**There was Council consensus to the appointment of Council Members Machisic and Hanna to this two by two committee.**

RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING UTILITY AUTHORITY

Mayor Botts recessed the regular City Council Meeting and called to order a Joint Meeting of the Banning City Council and the Banning Utility Authority.

CONSENT ITEMS

Councilmember Machisic pulled Consent Item No. 4 for discussion.

1. Approval of Minutes – Regular Meeting – 4/27/10.

Recommendation: That the minutes of the regular meeting of April 27, 2010 be approved.

2. Approval of Accounts Payable and Payroll Warrants for the Month of March 2010.

Recommendation: That the Council review and ratify the following reports per the California Government Code.

3. Approve Amendment to Original Agreement with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department.

Recommendation: That the City Council amend the current limit on compensation for services (\$25,000) with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department to \$50,000.

**Motion Machisic/Robinson to approved Consent Items 1, 2 and 3.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

Motion Hanna/Robinson to

4. Notice of Completion for Project No. 2008-01W, Brinton Reservoir.

Councilmember Machisic said he doesn't think that we ever named reservoirs after organizations or people. In fact, he doesn't think that any of our reservoirs have any names of any kind.

Mr. Burk said that was correct and normally they do not use surnames for projects like that. The Brinton Reservoir was a project as it relates to a location and staff can definitely rename the project at the desire of the Council.

**Motion Machisic/Robinson to approve Consent Item No. 4.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

Mayor Botts adjourned the Joint Meeting of the Banning City Council and the Banning Utility Authority and reconvened the regular City Council Meeting.

#### ADDENDUM - REPORTS OF OFFICERS

1. Animal Control/Shelter Update  
(Staff Report – Andrew Takata, City Manager)

City Manager said that at the last Council meeting there were two distinct directions to staff to come up with a short term plan and long term plan. He gave some background on the situation at the shelter and the animal being moved to the Thousand Palms Animal Shelter. During that same time the Council also formed a sub-committee to work with Supervisor Ashley with regards to the amount of money being charged to the City for animal control which was about \$655,000. The subcommittee members met with Supervisor Ashley and Jamie Hurtado and City staff began working with County staff. Where we are at now it went from \$655,000 to \$450,000 and he just received a letter from County Animal Control and as a goodwill gesture it is now at \$212,000 for the whole year which is actually under our budget. He would like to use the same subcommittee in regards to issues on which direction we should go in regard to our long-term issues for the animal shelter. After the last Council meeting you heard that the mold issue is no longer a problem and since then our staff has double checked the electrical inside and outside the building and there is no problem. That doesn't mean it wasn't flooded; it just means that the conduit is now dry. He said that staff has met with the County, then went on a tour of the new facility in San Jacinto and they have also met with the City of Beaumont and the City of Calimesa to look at the possibility of joining together to do something for animal control. He said that he asked resident veterinary, Dr. John McQuown, to look at the shelter with him and they went through the shelter and looked at all the different things and there is are cross contamination issues. There is probably one building in his opinion that is probably not worth keeping and that is probably one of the original buildings. Staff also met with Dr. Allan Drusys, Chief Veterinarian for the Riverside County Department of Animal Services and Dr. John McQuown to talk about these issues. There was some discussion about doing a short term thing about bringing the animals back to Banning. The County does not want to use the Banning facility because of the cross-contamination issues so that facility is not a short term issue for all of us right now because there are some capital improvements needed. Secondly, they really don't want to move the animals back from Thousand Palms and then in a month and a half have to take them to the San Jacinto facility. The County has also given the City a price which will be discussed at a future meeting in regards to both animal control and the animal shelter use at San Jacinto. Staff has also spoken to Beaumont and Calimesa in which they will receive more details but



even in the short term basis if we decide to go with animal control with Beaumont we would still have our animals going to San Jacinto because we don't have a facility that can actually take care of them right now. One of the issues about the shelter is that we can go ahead and use it the way it is and there are some liability issues obviously with cross contamination but we also have the issues as to who is going to take care of the shelter. He said that volunteers could probably take care of the shelter but you are going to need people to supervise the volunteers and it goes on and on so we actually have to do more. Dr. John McQuown has been kind enough to help him call some of the humane societies and he is waiting for some call backs in regards to those issues right now. So in the short term we have a computer in city hall lobby which people can access two websites and one is the adopt the pet and the other is that they can get on the City's website. City Manager said we really don't have a good short term solution that would bring the animals back into Banning. The long term solution is that he would like to have the subcommittee work with staff in regards to evaluating what is the best way to go and then bring that proposal back to the Council with regards to staying with the County or go with Beaumont and then look at some long term solutions. The only way that it is going to work that we can do anything in the Pass is to work with Beaumont, Calimesa and Morongo Tribe to get involved as a group otherwise we will have some other issues in regards to the costs. There was an old estimate that is about five years old and that is \$80,000 to basically create the drains individually, as well as, making sure there is no cross contamination.

Mayor Botts asked if we have animal service right now. City Manager said that we have animal service through the County.

Mayor Botts opened the item for public comments.

Ellen Carr, 471 W. George said at first the public was mildly frustrated. The frustration now has turned to anger. Their anger is that we do not have a shelter here in town. She had someone called her saying that they had to get their dog to the desert and they had no transportation of their own and if there was a bus service, you are not allowed to bring dogs and cats on the bus. People have told her that they will not travel 22 miles one way to go to another shelter. They want their shelter here. She said that they don't need the Taj Mahal. Let's get the talent with have in this city. We have concrete businesses and can't they come in and build barriers between the kennels. She said right now she is having a difficult time trying to find a place to get TLC's cats and their kittens spayed and neutered for a reasonable price and she gave examples of the costs involved including adoption fee and food. She said that somebody has to have a mobile unit that they can role in here. We are at the point where we need something here once a week. She said the mood is getting dark and the people are getting angry.

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

- City Council

Councilmember Robinson –

- Stated he received a letter from WRCOG (Western Riverside Council of Governments) just today thanking the City for their cooperation on the recycle fair. They took in more recycled e-waste goods than they had at any other collection point before and look forward to doing this again next year with the City.
- He also spent two days at the SCAG (Southern California Association of Governments) Regional Conference and General Assembly and received information on moving forward and planning together.
- Last night they heard about State and local redistricting. It is not that is going to happen; it is going to happen in 2011.

Mayor Pro Tem Hanna –

- She said that we have a Council Member who owns Renaissance Pet Resort who provides at his site spay and neutering and could he please talk about this.

Councilmember Robinson said that he doesn't do much with the operations there and has given away his portion of operations since 2008. But if you go to their website at [www.RenaissancePetResort.com](http://www.RenaissancePetResort.com) you will see a low cost vaccination clinic once a month and you will also see information on low cost spay and neuter and it is all done at their location on east Ramsey Street.

Councilmember Machisic –

- RCA (Regional Conservation Authority) had a workshop a week ago and they talked about reserve assembly and status, permittee obligations, management monitoring/funding, highlights of plans success and goals and objectives for 2010/11. They also voted not to increase their fees for new homes for this coming year. Revenues are down about 21% and donations are down about 59%.
- WRCOG voted to oppose Proposition 16
- In regards to the Census the County had information set up with 59 languages.
- The General of WRCOG is going to take place on June 24, 2010 at Casino Morongo Resort & Spa and the two featured speakers are Dee Dee Myers and Karl Rove and you can contact the City Clerk if you are interested in attending.

Councilmember Franklin -

- She received a thank you letter from Carolyn sue regarding our bus drivers and gave a lot of information but basically said that they are warm and caring people.
- At Passcom they talked about the city's emergency operation plan that is up for review this year and it happens once every three years and they think that we are probably in pretty good shape.
- At the Mt. San Jacinto College meeting last week they talked about the construction being on schedule and should have the classes opening up next spring at the site on Westward.
- Last night she attended a program for the Riverside County Earned Income Tax Credit Program and through this program they did over 2000 tax returns free with two days in Banning. Of the returns that were done they were able to get for the people \$2.9 million dollars back and because the program was so successful people can still get their tax returns done free. They can call 1-800-511-1110 and make an appointment and can still get their taxes done if they are low income.

Mayor Botts –

- Banning beat Beaumont on the first phase mail-in 73% to 68%; Mayor De Forge you owe us dinner. Although to be fair we probably ought to wait until the final census is in but he is confident that Banning is going to prevail.

Councilmember Franklin said that in regards to the census she did hear a report and for the mail-in Banning was at 77% and the average for the County was 72% and we were the highest city in this area for returns. If people did not do their returns, they don't have to bother because they will not take any more that are mailed in after the send in date. They will only be coming door to door.

- Report by City Manager  
He thanked Dr. John McQuown for helping him weed through all the dog manure he had to go through.

Mayor Botts thanked staff for all they do for the Council everyday and the Police Department. He thanked Dave Aleshire, City Attorney and John Jansons and stated that their work product was excellent on the Grand Jury response. He thanked the public for staying around; you care and you are involved.

#### ITEMS FOR FUTURE AGENDAS

##### New Items –

Mayor Pro Tem Hanna stated that the Banning Public Library would like to meet with the City Council. They have a long term plan that would be very interesting to the City plus she has heard that they bring in as many as 7,000 people to the downtown every month and this is probably somebody we should partner with as well.

Councilmember Franklin said that we have talked a lot this evening about generating revenue for the City and we have several agencies that we are working with now such as the Economic Development Agency, Diane Wirth, the Banning Chamber of Commerce and she would like to get on the agenda to hear some kind of update of where are we at this point. **There was Council consensus for a report.**

Councilmember Robinson said in regards to political signs we are fast approaching that time when signs are going to go up and we really don't have an ordinance that is enforceable.

City Manager said that segment of the sign ordinance will come to the Council and they should have something in place by the time people are signing up for their candidacy.

##### Pending Items –

1. Schedule Meetings with Our State and County Elected Officials
2. Set New Date for Joint Meeting with Banning School Board (6/10)
3. Massage Ordinance (ETA 6/8/10)

4. Consider Sister City Relationship with Township in Haiti

Mayor Botts asked the Council if they wanted to start a new item since it is now after 10:00 p.m. which is the cutoff time to consider new items. **There was Council consensus to start a new item.**

CLOSED SESSION

City Attorney said that the City Council will meet in closed session to consider personnel matters pursuant to Government Code Section 54957.

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

Meeting recessed at 9:47 p.m. and reconvened at 10:15 p.m. going into closed session. Meeting returned to regular session at 10:40 p.m. with the City Attorney reporting that the City Council met in closed session to discuss a personnel matter involving the position of a sergeant in the police department. The Council discussed a settlement agreement to deal with the dispute concerning that position and by a 5/0 vote the City Manager is authorized to enter into a settlement agreement.

ADJOURNMENT

By common consent the meeting adjourned at 10:42 p.m.

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Marie A. Calderon, City Clerk

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

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## CITY COUNCIL AGENDA

**Date:** May 25, 2010  
**TO:** City Council  
**FROM:** Kirby Warner, Interim Finance Director  
**SUBJECT:** Report of Investments for March 2010

**RECOMMENDATION:** "The City Council receive and place these required monthly *Reports of Investments* on file."

**JUSTIFICATION:** State law requires that a monthly report of investments be submitted to the Chief Executive Officer and the Legislative Body.

**BACKGROUND:** This report includes investments on hand at the end of March 2010. As of March 31, 2010, the City's operating funds totaled \$68,862,419. Included in operating funds is \$3,296,423 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of March 31, 2010 approximately 41% of the City's unrestricted cash balances were invested in investments other than LAIF.

Presented are three months of Investment Reports. March is a first issue, while January and February are included to provide multiple months of statements for comparison.

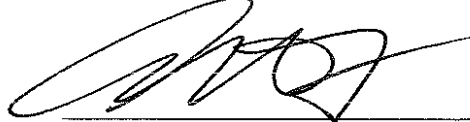
**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) decreased to 0.547 % in March. The average rate for all investments in March was 0.724%.

**RECOMMENDED BY:**



Kirby Warner  
Interim Finance Director

**APPROVED BY:**



Andy Takata  
City Manager

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**Summary Schedule of Cash and Investments****Operating Funds**Petty CashAmount

2,305

Bank Accounts

Interest

RateAmount

Wells Fargo Bank

0.000% 175,334

Wells Fargo Bank-Investment Account

0.100% 1,252,460

Bank of America-Airport

0.300% 5,839

Bank of America-Parking Citations

0.300% 4,113

Bank of America-CNG Station

0.300% 3,831*Money Market and Bank Account Sub-Total*

1,441,577

Government Pools

Local Agency Investment Fund: Account #1

0.547% 31,244,147

Account #2 Operating Amount

6,664,470

Account #2 CRA Bond Cash Bal

3,296,423

Local Agency Investment Fund: Account #2

0.547% 9,960,893*Government Pool Sub-Total*41,205,040**Operating Cash Balance****42,648,922**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.050%

**1,069,247**Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

1.050%

**25,144,250*****Operating Funds Total*****68,862,419****Fiscal Agent**Amount

BNY Western Trust Company

539,035

US Bank

56,089,370***Fiscal Agent Total*****56,628,406**

# City of Banning Investment Report

March 31, 2010

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
175,334	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	175,334	n/a	175,334
1,252,460	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	1,252,460	n/a	1,252,460
5,839	Bank of America-Airport	n/a	0.30%	daily	varies	5,839	n/a	5,839
4,113	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,113	n/a	4,113
3,831	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,831	n/a	3,831
Sub-total								1,441,577
<u>Government Pools</u>								
31,244,147	L.A.I.F. account #1	n/a	0.547%	daily	varies	31,244,147	n/a	31,244,147
9,960,893	L.A.I.F. account #2	n/a	0.547%	daily	varies	9,960,893	n/a	9,960,893
								41,205,040
<u>Investments-US Bank/Piper Jaffray</u>								
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,180,835
3,000,000	Federal Farm Credit Banks	n/a	1.350%	1/20/2012	1/7/2010	3,000,000	0	3,005,640
10,957,775	Money Market	n/a	0.000%	daily	varies	10,957,775	0	10,957,775
US Bank/Piper Jaffray Average Rate=								25,144,250

Average Rate All= 0.724%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 138 days and does not include Bond Reserve Fund Investments.

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# City of Banning Investment Report

March 31, 2010

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Mar-10	3/31/2010 Market Value
BNY WESTERN TRUST COMPANY								
1997 Admin Building COPs Refunding		2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.010%	11/1/2020 daily	522,375	*	522,562 16,473
US BANK								
1991 Wilson St. Assessment District		2012	AIM U.S. Treasury Money Market US Bank Mmkt 4-Ct	0.200% 0.000%	daily daily	265,580	4.20	265,589 0
2005 Fair Oaks Ranch Estates		2035	US Bank Mmkt 4-Ct	0.200%	daily	190,323	43.63	216,836
2003 CRA Tax Allocation Bonds		2028	U S Treasury Bill US Bank Mmkt 4-Ct	0.160% 0.200%	7/29/2010 daily	971,763	0.00	991,494 21,071
Surplus Fund			US Bank Mmkt 4-Ct	0.200% 0.025%	daily daily		4.85 0.01	55 8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund		2037	US Bank Mmkt 4-Ct Cdars Federated Treasury Oblig Fd.-9AMMF98F1	0.200%	daily daily		1,203.88	8,676,080
Reserve Fund			Reliance TR Co Cdars CD #0140029695-7AMCD1FD1	0.750%	5/20/2010			3,500,000
Special Fund			US Bank Mmkt 4-Ct	0.200%	daily	1,880,751	431.75	1,876,057
Surplus Fund			US Bank Mmkt 4-Ct	0.200%	daily		0.03	131
			US Bank Mmkt 4-Ct	0.210%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			US Bank Mmkt 4-Ct	0.210%	daily		0.01	28
Principal Account			US Bank Mmkt 4-Ct	0.210%	daily		0.01	33
			US Bank Mmkt 4-Ct	0.200%	daily		846.38	3,678,594
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			US Bank Mmkt 4-Ct	0.200%	daily		0.67	2,920
Principal Account			US Bank Mmkt 4-Ct	0.210%	daily		0.02	88
Reserve Fund			US Bank Mmkt 4-Ct	0.200%	daily	2,310,710	532.32	2,313,607
Project Fund			US Bank Mmkt 4-Ct	0.200%	daily		2,308.73	10,034,366
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund			US Bank Mmkt 4-Ct	0.200%	daily		0.04	163
			Reliance Trust Company # 9AMGGBEZ7	3.650%	11/17/2011	2,961,500		3,016,509
			US Bank Mmkt 4-Ct	0.200%	daily			123,865
Acquisition & Construction			US Bank Mmkt 4-Ct	0.200%	daily		372.28	2,085,410
			Reliance Trust Co C D #7AMCD5063	0.400%	11/26/2010			8,036,457
			Reliance TR CO Cdars #0140029703- 7AMCD1FE9	0.750%	5/20/2010			3,250,000
			Reliance Trust Co C D #7AMCD49F7	0.500%	11/18/2010			8,000,000
			Cdars Federated Treasury Oblig Fd.-9AMMF98F1	0.000%				
*Paid Semi-Annually-Deposited into Money Mkt Account								Total 56,628,406

\*Paid Semi-Annually-Deposited into Money Mkt Account



**Summary Schedule of Cash and Investments****Operating Funds**Petty CashAmount

2,305

Bank Accounts

Interest

Rate

Amount

Wells Fargo Bank

0.000%

145,421

Wells Fargo Bank-Investment Account

0.100%

869,347

Bank of America-Airport

0.300%

5,989

Bank of America-Parking Citations

0.300%

4,673

Bank of America-CNG Station

0.300%

3,936*Money Market and Bank Account Sub-Total*

1,029,367

Government Pools

Local Agency Investment Fund: Account #1

0.557%

31,244,147

Account #2 Operating Amount

6,370,698

Account #2 CRA Bond Cash Bal

3,290,195

Local Agency Investment Fund: Account #2

0.557%

9,660,893*Government Pool Sub-Total*40,905,040**Operating Cash Balance****41,936,711**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.050%

1,275,722

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

1.808%

25,092,159

**Operating Funds Total****68,304,593****Fiscal Agent**Amount

BNY Western Trust Company

539,035

US Bank

56,054,278**Fiscal Agent Total****56,593,313**

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# City of Banning Investment Report

February 28, 2010

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
145,421	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	145,421	n/a	145,421
869,347	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	869,347	n/a	869,347
5,989	Bank of America-Airport	n/a	0.30%	daily	varies	5,989	n/a	5,989
4,673	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,673	n/a	4,673
3,936	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,936	n/a	3,936
Sub-total								1,029,367
<u>Government Pools</u>								
31,244,147	L.A.I.F. account #1	n/a	0.557%	daily	varies	31,244,147	n/a	31,244,147
9,660,893	L.A.I.F. account #2	n/a	0.557%	daily	varies	9,660,893	n/a	9,660,893
<u>Investments- US Bank/Piper Jaffray</u>								40,905,040
6,000,000	Federal Farm Credit Banks	n/a	2.125%	9/23/2011	3/24/2008	6,000,000	0	6,005,460
3,000,000	Fedl Natl Mig Assn	n/a	2.050%	12/30/2011	12/23/2008	3,000,000	0	3,002,820
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,194,909
3,000,000	Federal Farm Credit Banks	n/a	1.350%	1/20/2012	1/7/2010	3,000,000	0	3,010,320
1,878,650	Money Market	n/a	0.000%	daily	varies	1,878,650	0	1,878,650
US Bank/Piper Jaffray Average Rate=								25,092,159
Average Rate All=								1.018%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 228 days and does not include Bond Reserve Fund Investments.

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# City of Banning Investment Report

February 28, 2010

## Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Minimum Reserve Requirement	Interest Feb-10	2/28/2010 Market Value
<b>BNY WESTERN TRUST COMPANY</b>							
1997 Admin Building COP's Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.010%	11/1/2020 daily	522,375	*	522,562 16,473
<b>US BANK</b>							
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market US Bank Mmkt 4-Ct	0.200% 0.280%	daily daily	265,580	4.65	265,622 14
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct	0.300%	daily	190,323	48.29	189,588
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill US Bank Mmkt 4-Ct	4.560% 0.300%	1/28/2010 daily	971,763	0.00 *	0
		US Bank Mmkt 4-Ct	0.300%	daily		38.41	1,012,421
		US Bank Mmkt 4-Ct	0.290%	daily		54.85	55
Surplus Fund		US Bank Mmkt 4-Ct	0.025%	daily			8
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>							
Redevelop Fund	2037	US Bank Mmkt 4-Ct	0.300%	daily		1,381.15	5,231,198
		Cdars Federated Treasury Oblig Fd.-9AMMF98F1	0.000%	daily			3,441,207
		Reliance TR Co Cdars CD #0140029695-7AMCD1FD1	0.750%	5/20/2010			3,500,000
Reserve Fund		US Bank Mmkt 4-Ct	0.300%	daily	1,880,751	478.59	1,876,057
Special Fund		US Bank Mmkt 4-Ct	0.300%	daily		131.19	131
Surplus Fund		US Bank Mmkt 4-Ct	0.320%	daily			9
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Bond Fund		US Bank Mmkt 4-Ct	0.320%	daily		0.01	28
Principal Account		US Bank Mmkt 4-Ct	0.300%	daily		0.01	33
		US Bank Mmkt 4-Ct	0.300%	daily		936.80	3,677,748
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Bond Fund		US Bank Mmkt 4-Ct	0.300%	daily		0.74	2,919
Principal Account		US Bank Mmkt 4-Ct	0.300%	daily		0.02	88
Reserve Fund		US Bank Mmkt 4-Ct	0.300%	daily	2,310,710	589.19	2,313,075
Project Fund		US Bank Mmkt 4-Ct	0.300%	daily		2,555.35	10,032,057
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>							
		US Bank Mmkt 4-Ct	0.300%	daily		0.04	163
Reserve Fund		Reliance Trust Company # 9AMGGBEZ7	3.650%	11/17/2011	2,961,500		3,016,509
		Cdars Federated Treasury Oblig Fd.-9AMMF98F1	0.000%	daily			123,865
Acquisition & Construction		US Bank Mmkt 4-Ct	0.300%	daily		413.37	1,617,677
		Reliance Trust Co C D #7AMCD5063	0.400%	11/26/2010			8,036,457
		Reliance TR CO Cdars #0140029703- 7AMCDIFE9	0.750%	5/20/2010			3,250,000
		Reliance Trust Co C D #7AMCD49F7	0.500%	11/18/2010			8,000,000
		Cdars Federated Treasury Oblig Fd.-9AMMF98F1	0.000%				467,348
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>						<b>Total</b>	<b>56,593,313</b>

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**Summary Schedule of Cash and Investments****Operating Funds**Petty Cash

Amount

2,305

Bank Accounts

Interest

Rate

Amount

Wells Fargo Bank

0.000%

475,747

Wells Fargo Bank-Investment Account

0.100%

3,885,153

Bank of America-Airport

0.300%

3,423

Bank of America-Parking Citations

0.300%

3,403

Bank of America-CNG Station

0.300%

3,232

*Money Market and Bank Account Sub-Total*

4,370,957

Government Pools

Local Agency Investment Fund: Account #1

0.558%

31,244,147

Account #2 Operating Amount

4,152,278

Account #2 CRA Bond Cash Bal

3,508,615

Local Agency Investment Fund: Account #2

0.558%

7,660,893

*Government Pool Sub-Total*

38,905,040

**Operating Cash Balance****43,278,302**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.050%

1,426,876

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

1.808%

25,110,992

*Operating Funds Total***69,816,171****Fiscal Agent**

Amount

BNY Western Trust Company

539,035

US Bank

56,227,434

*Fiscal Agent Total***56,766,469**

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# City of Banning Investment Report

January 31, 2010

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
475,747	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	475,747	n/a	475,747
3,885,153	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	3,885,153	n/a	3,885,153
3,423	Bank of America-Airport	n/a	0.30%	daily	varies	3,423	n/a	3,423
3,403	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,403	n/a	3,403
3,232	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,232	n/a	3,232
Sub-total								
								4,370,957
<u>Government Pools</u>								
31,244,147	L.A.I.F. account #1	n/a	0.558%	daily	varies	31,244,147	n/a	31,244,147
7,660,893	L.A.I.F. account #2	n/a	0.558%	daily	varies	7,660,893	n/a	7,660,893
Investments-US Bank/Piper Jaffray								
								38,905,040
6,000,000	Federal Farm Credit Banks	n/a	2.125%	9/23/2011	3/24/2008	6,000,000	0	6,012,900
3,000,000	Fedl Natl Mtg Assn	n/a	2.050%	12/30/2011	12/23/2008	3,000,000	0	3,006,570
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,206,303
3,000,000	Federal Farm Credit Banks	n/a	1.350%	1/20/2012	1/7/2010	3,000,000	0	3,006,570
1,878,650	Money Market	n/a	0.000%	daily	varies	1,878,650	0	1,878,650
US Bank/Piper Jaffray Average Rate=								
			1.808%					25,110,992
Average Rate All= 0.986%								

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 234 days and does not include Bond Reserve Fund Investments.

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# City of Banning Investment Report

January 31, 2010

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Jan-10	1/10/2010 Market Value
BNY WESTERN TRUST COMPANY								
1997 Admin Building COPs Refunding		2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.010%	11/1/2020 daily	522,375	* 	522,562 16,473
US BANK								
1991 Wilson St. Assessment District		2012	AIM U.S. Treasury Money Market US Bank Mmkt 4-Ct	0.200% 0.280%	daily daily	265,580	5.28	265,618 14
2005 Fair Oaks Ranch Estates		2035	US Bank Mmkt 4-Ct	0.300%	daily	190,323	48.28	189,539
2003 CRA Tax Allocation Bonds		2028	U S Treasury Bill US Bank Mmkt 4-Ct	4.560% 0.300%	1/28/2010 daily	971,763	21,021.68 5.80	* 1,014,759
			US Bank Mmkt 4-Ct	0.300%	daily		0.04	256,467
Surplus Fund			US Bank Mmkt 4-Ct	0.025%	daily			8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund		2037	US Bank Mmkt 4-Ct	0.300%	daily		1,835.16	5,229,816
			Cdars Federated Treasury Oblig Fd.-9AMMF98F1	0.000%	daily			3,336,669
			Reliance TR Co Cdars CD #0140029695-7AMCD1FD1	0.750%	5/20/2010			3,500,000
Reserve Fund			US Bank Mmkt 4-Ct	0.300%	daily	1,880,751	478.48	1,878,401
Special Fund			US Bank Mmkt 4-Ct	0.300%	daily		0.05	613,873
Surplus Fund			US Bank Mmkt 4-Ct	0.320%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			US Bank Mmkt 4-Ct	0.320%	daily		0.01	28
Principal Account			US Bank Mmkt 4-Ct	0.300%	daily		0.01	33
			US Bank Mmkt 4-Ct	0.300%	daily		913.10	3,676,811
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			US Bank Mmkt 4-Ct	0.300%	daily		0.74	2,918
Principal Account			US Bank Mmkt 4-Ct	0.300%	daily		0.02	88
Reserve Fund			US Bank Mmkt 4-Ct	0.300%	daily	2,310,710	589.05	2,312,486
Project Fund			US Bank Mmkt 4-Ct	0.300%	daily		3,312.43	10,029,502
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund			US Bank Mmkt 4-Ct	0.300%	daily		0.04	163
Acquisition & Construction			Reliance Trust Company # 9AMGGBEZ7 US Bank Mmkt 4-Ct	3.650% 0.300%	11/17/2011 daily	2,961,500	413.37	3,016,509 1,617,265
			Reliance Trust Co C D #7AMCD5063	0.400%	11/26/2010			8,036,457
			Reliance TR CO Cdars #0140029703- 7AMCD1FE9	0.750%	5/20/2010			3,250,000
			Reliance Trust Co C D #7AMCD49F7	0.500%	11/18/2010			8,000,000
*Paid Semi-Annually-Deposited into Money Mkt Account							Total	28,623.54
								56,766,469

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**CITY COUNCIL AGENDA  
PUBLIC HEARING**

**DATE:** May 25, 2010

**TO:** Honorable Mayor and City Council

**FROM:** Kahono Oei, City Engineer

**SUBJECT:** Resolution No. 2010-34, "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2010/11"

**RECOMMENDATION:** The City Council adopt Resolution No. 2010-34:

- I. "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2010/11," pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code.
- II. Authorizing and directing the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office.

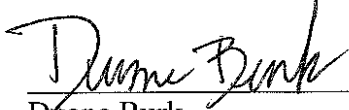
**JUSTIFICATION:** The adoption of Resolution No. 2010-34 is essential to confirm the assessments for the Fiscal Year 2010/11 update of Landscape Maintenance District No. 1 ("the District").

**BACKGROUND:** In accordance with the "Landscaping and Lighting Act of 1972" of the Streets and Highways Code, the City Council adopted a resolution ordering the formation of Landscape Maintenance District (LMD) No. 1 by adopting Resolution No. 1990-59 on August 14, 1990. An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005. A map displaying the District is attached herewith as Exhibit "A". On January 12, 2010, the City Council adopted Resolution No. 2010-01, and initiated proceedings to update the District for the next fiscal year and ordered the preparation of the Engineer's Report. Subsequently, on April 13, 2010, the City Council adopted Resolution No. 2010-21, approving the Engineer's Report and setting the date for the public hearing to levy and collect the assessments. Resolution No. 2010-34, if approved, will confirm the assessments for the Fiscal Year 2010/11. The schedule updating Landscape Maintenance District No. 1 is shown on the attached Exhibit "B", and the Notice of Public Hearing is shown on the attached Exhibit "C".

**FISCAL DATA:** The new assessments for a single-family dwelling now ranges from \$94.54 to \$191.59, as reflected in the Engineer's Report approved by the City Council on April 13, 2010. An increase of 1.1 %, based on the average Consumer Price Index (CPI) percentage increase over the previous fiscal year for the Los Angeles-Riverside-Orange County area as reported by the U.S. Department of Labor, is incorporated in the proposed assessments. Total revenues from the proposed 2010/11 Fiscal Year assessments for the Landscape Maintenance District are about

\$130,528.00. The maintenance and servicing of LMD No.1 will be done in house by Public Works Department staff over the next fiscal year beginning on July 1, 2010.

**RECOMMENDED BY:**



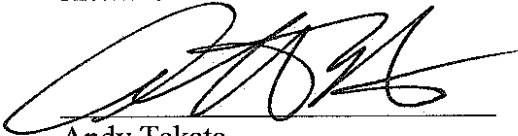
Duane Burk  
Director of Public Works

**REVIEWED BY:**



Kirby Warner  
Interim Director of Finance

**APPROVED BY:**



Andy Takata  
City Manager



## **RESOLUTION NO. 2010-34**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, CONFIRMING A DIAGRAM AND THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN THE CITY OF BANNING'S LANDSCAPE MAINTENANCE DISTRICT NO. 1 FOR FISCAL YEAR 2010/11, PURSUANT TO THE PROVISIONS OF PART 2 OF DIVISION 15 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE**

**WHEREAS**, the City Council of the City of Banning has by its Resolution No. 2010-01 initiated proceedings for the levy and collection of assessments for the 2010/11 Fiscal Year for Landscape Maintenance District No. 1, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code; and

**WHEREAS**, the City Council has ordered the preparation of the Engineer's Report, and the City Engineer has prepared and filed with the City Clerk a report pursuant to law for the City Council's consideration, and subsequently thereto the City Council adopted its Resolution No. 2010-21, approving the report of the Engineer and declaring the intention of the City Council to order the levy and collection of assessments to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping facilities in the City of Banning for the Fiscal Year commencing July 1, 2010 and ending June 30, 2011.

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

**Section 1.** The above recitals are all true and correct.

**Section 2.** Following notice duly given by publication, the City Council has held a full and fair public hearing regarding the levy of the proposed assessment within Landscape Maintenance District No. 1 for the Fiscal Year commencing July 1, 2010 and ending June 30, 2011, to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping and storm drain facilities installed and constructed within public places in the City of Banning, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code. All interested persons were offered the opportunity to hear and be heard regarding protests and objections to the levy and collection of the proposed assessment against lots or parcels of real property within City of Banning, Landscape Maintenance District No. 1. All protests and objections to the levy and collection of the proposed assessments for the Fiscal Year commencing on July 1, 2010 and ending on June 30, 2011, are hereby overruled by the City Council.

**Section 3.** The City Council hereby orders the maintenance and servicing of the existing and proposed public landscape facilities installed and constructed in public places in the City of Banning and hereby confirms the diagram and assessment set forth in the Engineer's Report.

- Section 4.** The assessment is in compliance with the provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code and with any applicable provisions of Proposition 218.
- Section 5.** The assessment is levied without regard to property valuation.
- Section 6.** The assessment is levied for the purpose of paying the costs and expenses of maintaining and servicing existing and proposed public landscaping facilities installed and constructed in public places in the City of Banning for the Fiscal Year commencing on July 1, 2010 and ending on June 30, 2011.
- Section 7.** The adoption of Resolution No. 2010-34 constitutes the levy of an assessment for the Fiscal Year commencing on July 1, 2010 and ending on June 30, 2011.
- Section 8.** The maintenance and servicing of the public landscaping facilities shall be performed pursuant to law and the County Recorder/Auditor of Riverside County shall enter on the County Assessment Roll opposite each lot or parcel of land the amount of the assessment and such assessments shall then be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the assessments shall be paid to the City Treasurer.
- Section 9.** The City Treasurer shall deposit all monies representing assessments collected by the County to the credit of a special fund known as Improvement Fund, Landscape Maintenance District No. 1.
- Section 10.** The City Clerk is hereby authorized and directed to file the diagram and assessment, or a certified copy of the diagram and assessment, with the Riverside County, Assessor's Office, together with a certified copy of Resolution 2010-34 upon its adoption.
- Section 11.** A certified copy of the assessment and diagram shall be filed in the Office of the City Clerk, with a duplicate copy on file in the Office of the City Engineer and open for public review.

**PASSED, APPROVED AND ADOPTED** this 25<sup>th</sup> day of May, 2010.

---

Robert E. Botts, Mayor  
City of Banning

**ATTEST**

---

Marie A. Calderon, City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT**

---

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

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-34 was adopted by the City Council of the City of Banning at the Regular Meeting thereof held on the 25th day of May, 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**EXHIBIT “A”**

**LANDSCAPE MAINTENANCE DISTRICT NO. 1  
FOR  
FISCAL YEAR 2010/2011**

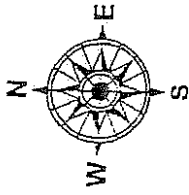
Legend

Existing Tracts:

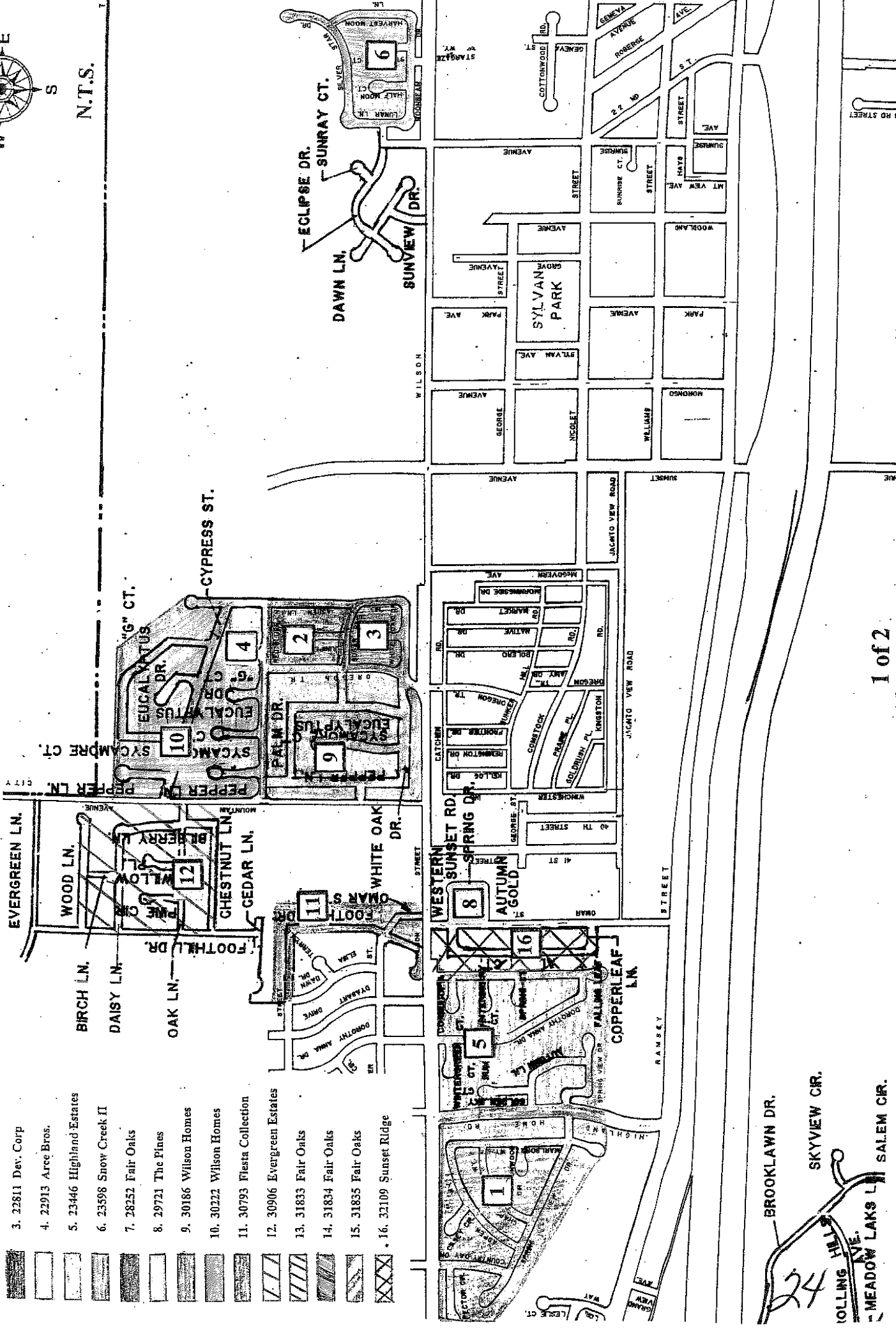
1. 21882 Snow Creek I
2. 22810 Dev. Corp
3. 22811 Dev. Corp
4. 22913 Arce Bros.
5. 23446 Highland Estates
6. 23598 Snow Creek II
7. 28252 Fair Oaks
8. 29721 The Pines
9. 30186 Wilson Homes
10. 30222 Wilson Homes
11. 30793 Fiesta Collection
12. 30906 Evergreen Estates
13. 31833 Fair Oaks
14. 31834 Fair Oaks
15. 31835 Fair Oaks
16. 32109 Sunset Ridge

# MAP OF LANDSCAPE MAINTENANCE DISTRICT NO. I

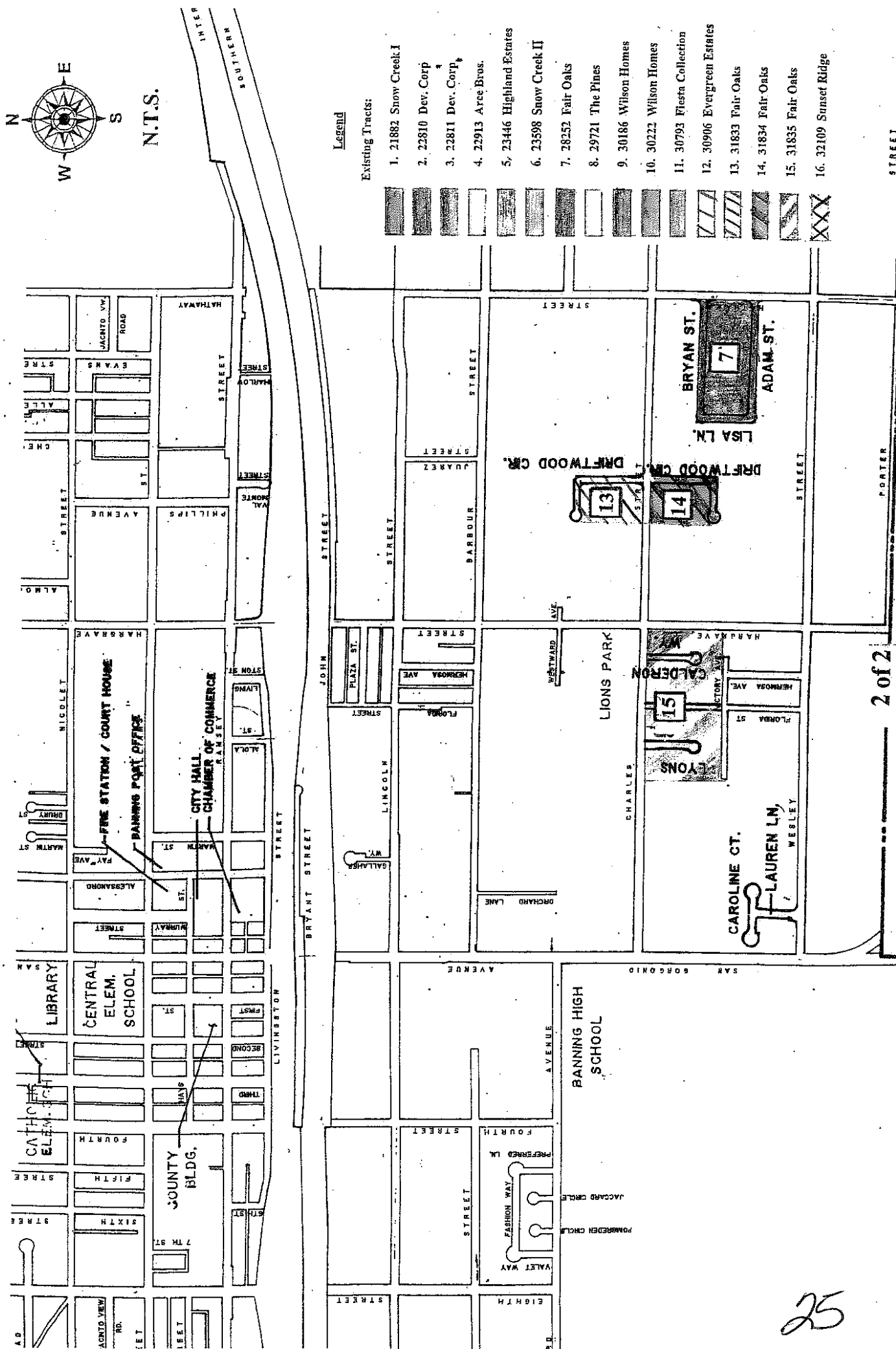
## JANUARY 2010



N.T.S.



# MAP OF LANDSCAPE MAINTENANCE DISTRICT NO. I JANUARY 2010



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## **EXHIBIT “B”**

### **TENTATIVE SCHEDULE UPDATING LANDSCAPE MAINTENANCE DISTRICT NO. 1**

<u>Item</u>	<u>Council Meeting</u>
Resolution Initiating Update	January 12, 2010
Resolution of Intention and Approving Engineer's Report	April 13, 2010
Public Hearing and Resolution Confirming Assessment	May 25, 2010

**EXHIBIT “C”**

**NOTICE OF PUBLIC HEARING  
FOR  
RESOLUTION NO. 2010-34, “CONFIRMING A DIAGRAM AND  
THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN  
THE CITY OF BANNING’S LANDSCAPE MAINTENANCE  
DISTRICT NO. 1 FOR FISCAL YEAR 2010/2011”**

**RECORD GAZETTE**

**MAY 7, 2010**



**Public Notices**

NOTICE OF PUBLIC HEARING PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held at a regular City Council Meeting on Tuesday, May 25, 2010, at 6:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California regarding Resolution No. 2010-34, "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2010/11." ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or send their written comments to the City Clerk, P.O. Box 998, Banning, California 92220. Information regarding the foregoing can be obtained by contacting the Engineering Division of the Public Works Department at the above address or by telephone at 951-922-3130. Data relevant to this matter will be available for public viewing at Banning City Hall, 99 E. Ramsey Street, Banning, California for the period of 10 days prior to the Public Hearing. If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, if a public hearing is held on the proposal, you or someone else must have raised those issues at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009). BY ORDER OF THE CITY CLERK of the City of Banning, California. /s/ Marie A. Calderon, City Clerk City of Banning, California DATED: May 3, 2010 PUBLISH: May 7, 2010  
Publish The Record  
Gazette  
No. 15694  
5/07/2010

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**CITY COUNCIL AGENDA  
PUBLIC HEARING**

**Date:** May 25, 2010

**TO:** City Council

**FROM:** Phil Holder, Lieutenant

**SUBJECT:** Resolution 2010-35. 2010 Edward Byrne Memorial Justice Assistance Grant

**RECOMMENDATION:** "The City Council conduct a Public Hearing and accept grant funds provided by the Office of Justice Programs in the amount of \$20,986 to cover overtime costs for police officers participating in Banning Police Activities League (BPAL) activities."

**JUSTIFICATION:** The Police Department proposes to use the grant funds to cover overtime costs of police officers and non-sworn personnel to participate in BPAL activities. The use of grant funds to cover this cost will allow our employees to continue their commitment to the department's youth programs.


**BACKGROUND:** On April 28, 2010 the Banning Police Department was notified by the U.S. Bureau of Justice Assistance that it was eligible to apply for the 2010 Edward Byrne Memorial Justice Assistance Grant in the amount of \$20,986. Per U.S. Department of Justice regulations a public hearing must be conducted to allow citizens to make comments on the intended use of the noted grant funds before funding can be approved.

**ACTION PLAN:** Conduct a public hearing and receive Banning City Council approval to accept the 2010 Edward Byrne Memorial Justice Assistance Grant in the amount of \$20,986 to fund overtime for our employees to participate in B.P.A.L. activities.


**STRATEGIC PLAN INTEGRATION:** Council approval of this recommendation will help facilitate the Police Department's goals of improving the department's image in the community and maintaining its high level of commitment to youth programs.

**FISCAL DATA:** Accepted Byrne Grant funds will be appropriated to the Police Department's Overtime Account to pay overtime costs of department employees involved BPAL activities.

**RECOMMENDED BY:**

  
Leonard Purvis  
Chief of Police

**REVIEWED BY:**

  
Kirby Warner  
Interim Finance Director

**APPROVED BY:**

  
Andrew Takata  
City Manager

**RESOLUTION NO. 2010-35**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE ACCEPTANCE OF THE 2010 U.S. DEPARTMENT OF JUSTICE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT IN THE AMOUNT OF \$20,986.00 TO BE USED FOR POLICE DEPARTMENT OVERTIME.**

**WHEREAS**, having completed a public hearing on the proposed use of the 2010 U.S. Department of Justice Byrne Grant; and

**WHEREAS**, the City of Banning Police Department is committed to bringing together the Police Department, Community, and City Leaders to reduce the crime in the City of Banning; and

**WHEREAS**, the City of Banning Police Department is committed to working with the children in the community to deter them from gang involvement; and

**WHEREAS**, the City's procedures requires the City Council to adopt a resolution authorizing the expenditure of funds procured through grants.

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Banning approves the proposed use of the 2010 U.S. Department of Justice Edward Byrne Memorial Assistance Grant in the amount of \$20,986 and upon award of the grant appropriates those funds to the Banning Police Department Overtime Account (001-2200-421-1030). The Finance Department is authorized to make necessary budget adjustments related to these accepted funds.

**PASSED, APPROVED, AND ADOPTED** this 25th day of May, 2010.

\_\_\_\_\_  
Robert E. Botts, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

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

\_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-35 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 25th day of May 2010, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA  
PUBLIC HEARING**

**DATE:** May 25, 2010

**TO:** Honorable Mayor and City Council Members

**FROM:** Zai Abu Bakar, Community Development Director

**SUBJECT:** Ordinance No. 1423 – An Interim Urgency Ordinance Extending for Ten Months and Fifteen Days Interim Urgency Ordinance No. 1422 (Temporary Moratorium on the Permitting of Tattoo & Piercing, Fortune Telling, Push-Cart Venders, and Hookah (Smoking) Lounge Land Uses Pending the Review and Possible Amendment of Zoning Regulations Applicable to Such Uses).

**RECOMMENDATION:** That the City Council adopt Ordinance No. 1423 - An Interim Urgency Ordinance Extending for Ten Months and Fifteen Days Interim Urgency Ordinance No. 1422 that Established a Temporary Moratorium on the Permitting of Tattoo & Piercing, Fortune Telling, Push-Cart Venders, and Hookah (Smoking) Lounge Land Uses Pending the Review and Possible Amendment of Zoning Regulations Applicable to Such Uses (Attachment 1).

**JUSTIFICATION:** Staff received a significant number of inquiries within the last six months relative to these uses. The Zoning Code is currently silent and does not address these general uses. Staff requires additional time to study the effects and appropriateness of such uses in the various zoning districts and, if appropriate, prepare proposed changes to the zoning regulations.

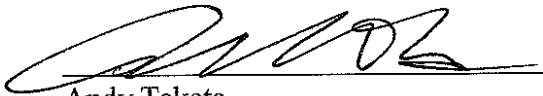
**BACKGROUND/ANALYSIS:** In accordance with Government Code Section 65858, the City Council approved Interim Urgency Ordinance No. 1422 on April 13, 2010, that established a 45 day temporary moratorium on the permitting of Tattoo & Piercing, Fortune Telling, Push-Cart Vendors, and Hookah (Smoking) Lounge land uses (Attachment 2). Staff is not able to complete the required studies and analysis and then present the results to Planning Commission and City Council for review and approval prior to the expiration date of May 28, 2010; therefore, an extension of Ordinance No. 1422 for an additional 10 months and 15 days is requested.

Additionally, in accordance with Government Code Section 65858(d) a written report was issued on May 12, 2010, describing the measures taken to alleviate the condition which led to the adoption of the urgency ordinance (Attachment 3).

**PUBLIC COMMUNICATION:** The proposed Ordinance No. 1423 was advertised in the *Record Gazette*, a newspaper of general circulation within the City of Banning, on May 14, 2010. As of the date of this report, staff has not received any verbal or written comments for, or against, the proposed Ordinance.

**FISCAL DATA:** There is no direct fiscal impact associated with adoption of this ordinance.

**APPROVED BY:**



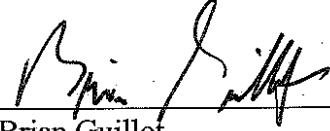
Andy Takata  
City Manager

**RECOMMENDED BY:**



Zai Abu Bakar  
Community Development Director

**PREPARED BY:**



Brian Guillot  
Assistant Planner

**Attachment:**

1. Ordinance No. 1423

**Exhibit:**

- A. Copy of Ordinance No. 1422
- B. Urgency Ordinance Status Report

# Attachment 1

(Ordinance No. 1423)

ORDINANCE NO. 1423

AN INTERIM URGENCY ORDINANCE OF THE CITY OF BANNING, CALIFORNIA EXTENDING FOR TEN MONTHS AND FIFTEEN DAYS INTERIM URGENCY ORDINANCE NO. 1422 THAT ESTABLISHED A TEMPORARY MORATORIUM ON THE PERMITTING OF TATTOO & PIERCING, FORTUNE TELLING, PUSH-CART VENDORS, AND HOOKAH (SMOKING) LOUNGE LAND USES PENDING THE REVIEW AND POSSIBLE AMENDMENT OF ZONING REGULATIONS APPLICABLE TO SUCH USES

**WHEREAS**, the City Council of the City of Banning at its regular meeting of April 13, 2010, and pursuant to Government Code Sections 65858, 36394, and 36397, adopted Interim Urgency Ordinance No. 1422 (Exhibit A) declaring a moratorium (the "Moratorium") on any new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permit, variance, building permit, business license, occupancy permit and any land use entitlement; and

**WHEREAS**, staff is not able to complete the required studies and analysis and then present the results to Planning Commission and City Council for review and approval prior to the expiration date of May 28, 2010 the date the forty-five day Moratorium expires; and

**WHEREAS**, all the findings cited in Interim Urgency Ordinance No. 1422 concerning the immediate need to adopt the Moratorium to protect the public health, safety, and welfare still remain due to the fact that the City of Banning does not have zoning regulations that directly address the subject land uses; and

**WHEREAS**, the City Council, acting through its planning staff, has issued the written report required pursuant to Government Code Section 65858(d) describing the measures taken to date to alleviate the conditions that led up to the adoption of Interim Urgency Ordinance No. 1422; and

**WHEREAS**, in spite of the progress to date described in the written report, additional time is required to continue to study, analyze, and prepare any proposed changes to zoning regulations and present any potential changes to the zoning regulations for public hearing and possible adoption; and

**WHEREAS**, pending completion of the tasks as set forth herein, the City Council finds and determines that there is a need to extend Interim Urgency Ordinance No. 1422 for an additional ten (10) months and fifteen (15) days as authorized by Government Code Sections 65858(a), 36394, and 36397, to enable City staff to further research and develop any potential revised zoning regulations, which research will include, but not limited to, the following:



- a. Discussions with the Police Department in order to identify and address their concerns regarding the subject uses.
- b. A survey of zones within the City to determine where the subject uses may be appropriate and suitable, which includes consideration of any comments and concerns of received from public and reviewed by City staff.
- c. A survey of other nearby cities to learn about their regulatory requirements concerning the establishment of the subject uses including local and regional concerns.

**WHEREAS**, Government Code Section 65858(a) provides for the extension of urgency measures after notice of a public hearing pursuant to Section 65090 and said notice was advertised in the Record Gazette, a newspaper of general circulation within the City of Banning, on May 14, 2010; and

**WHEREAS**, on May 25, 2010, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, Ordinance No. 1423, and at which time the City Council considered said ordinance; and

**NOW THEREFORE**, the City Council of the City of Banning does ordain as follows:

**SECTION 1.**     Above-Recitals. The above recitals are true and correct.

**SECTION 2.**     Effectiveness of Ordinance. Interim Urgency Ordinance No. 1422 adopted April 13, 2010 that will expire on May 28, 2010 is hereby re-adopted and extended in full force and effect for ten (10) months and fifteen (15) days, or until such time as the City establishes zoning regulations for said land uses pursuant to Government Code Section 65858(a).

**SECTION 3.**     Alleviation Measures Report. In accordance with Government Code Section 65858(d), the City Council hereby issues the written report dated May 12, 2010 describing the measures taken to alleviate the conditions that led to the adoption of Interim Urgency Ordinance No. 1422, and incorporates that report by reference as if set forth in Exhibit B.

**SECTION 4.**     Findings; Declaration of Urgency. The City Council finds and declares that there is a need to adopt this Interim Urgency Ordinance establishing a moratorium on all new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permits, variance, building permit, business license, occupancy permit and any land use entitlement. The City has received inquiries regarding the establishment of these uses. Based on the following, the City Council declares that this Interim Urgency Ordinance is necessary to protect the public health, safety, and welfare while the City considers revisions to the zoning regulations:

The practice of tattoo and body piercing presents certain public health and safety risks, in particular the potential spread of blood born disease such as hepatitis. Additionally, the

image of tattoo parlors may not be compatible with other uses designed to encourage a family-oriented environment.

Consistent with the City's image as primarily a single-family community, fortune telling and other occult arts may not be compatible with single-family residential neighborhoods and those commercial zones that allow single-family dwellings such as the Downtown Commercial zone.

The unrestricted sale and distribution of food, beverages, merchandise or services from mobile food units or pedestrians within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians that are exposed to hazards from other vehicular traffic in the vicinity. Also, the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in conformity with health, safety, zoning and land use regulations is contrary to the public welfare.

The establishment of hookah (smoking) lounges produce secondary smoke which can negatively affect workers, passers-by and neighbors, particularly minors, the elderly, sick and disabled. Moreover, smoking lounges may serve as a marketing vehicle for tobacco, which can also have detrimental effects on minors by encouraging them to smoke.

In order to evaluate these uses, City staff needs time to 1) study the effect of said uses on the public; 2) determine which, if any, zoning districts are appropriate for such uses; 3) determine what level of discretionary review is required for such uses. If these uses are allowed to proceed without updated regulations, they could have potential adverse effects on neighborhoods in the City, which presents a clear and immediate danger to the public health, safety and welfare.

Further, if these uses are established without updated regulations, such uses might be inconsistent with surrounding uses, detrimental to the public health, safety and welfare, and in conflict with contemplated zoning proposals. Failure to enact this moratorium during the stated period may result in significant irreversible change to neighborhood and community character. The premature establishment of such uses would also conflict with the City's effort to study and consider zoning and other proposals to regulate or prohibit these uses. Based on the foregoing, the City Council declares that this Interim Urgency Ordinance is necessary to protect the public health, safety and welfare while the City considers revisions to the zoning regulations related to these uses.

**SECTION 5.**     Moratorium. The City Council hereby declares a moratorium on any new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permit, variance, building permit, business license, occupancy permit and any land use entitlement.

**SECTION 6.**     Conflicting Laws. For the term of this ordinance, as set forth in Section 2 above, the provisions of this ordinance shall govern. To the extent that there is any

conflict between the provisions of this ordinance and the provisions of any other city code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

**SECTION 7.**     Grandfathering. This Interim Urgency Ordinance shall only apply to new applications for new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permits, variance, building permit, business license, occupancy permit and any land use entitlement. This Interim Urgency Ordinance shall not apply to any project which has been previously approved by the City or its constituent boards, commissions or officials so long as such approvals remain valid, nor shall it apply to any application for discretionary land use development entitlements, or zoning variances which were approved and that were issued a Certificate of Occupancy by the City prior to the effective date of this Interim Urgency Ordinance.

**SECTION 8.**     CEQA Finding. The City Council hereby finds that there is no possibility that the adoption of this Interim Urgency Ordinance will have a significant effect on the environment. This finding is supported by the following facts: (1) this ordinance authorizes the undertaking of feasibility and planning studies; and (2) any development which may occur pursuant to the interim standards will not be approved until a complete environmental evaluation of the proposed project has occurred. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14 California Code of Regulations, Section 15262.

**SECTION 9.**     Vote Required for Adoption of Ordinance. This Interim Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Banning by Government Code Section 65858, 36934 and 36937, and shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

**PASSED, APPROVED, AND ADOPTED** as an INTERIM URGENCY ORDINANCE  
this 25<sup>th</sup> day of May, 2010.

---

Robert E. Botts, Mayor  
City of Banning

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

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP  
City of Banning, California

**ATTEST:**

---

Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Urgency Ordinance No. 1423 was duly adopted at a regular meeting of the City Council of the City of Banning, held on the 25<sup>th</sup> day of May, 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

# Exhibit A

(Copy of Ordinance No. 1422)

ORDINANCE NO. 1422

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF BANNING,  
CALIFORNIA, ESTABLISHING A TEMPORARY MORATORIUM  
ON THE PERMITTING OF TATTOO & PIERCING, FORTUNE  
TELLING, PUSH-CART VENDORS, AND HOOKAH (SMOKING)  
LOUNGE LAND USES PENDING THE REVIEW AND POSSIBLE  
AMENDMENT OF ZONING REGULATIONS APPLICABLE TO  
SUCH USES, TO BECOME EFFECTIVE IMMEDIATELY.**

**WHEREAS**, the City Council approved the General Plan and Zoning Ordinance on January 31, 2006; and

**WHEREAS**, in response to public inquiries, staff has identified that no provision is made in the adopted Zoning Code for tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land uses; and

**WHEREAS**, one of the purposes of the establishment of land use districts as defined in the Zoning Code is to improve the livability of residential neighborhoods while encouraging economic development that supports commercial and industrial businesses; and

**WHEREAS**, the Community Development Director has determined that the subject uses differ in character substantially from those uses listed in the Zoning Code; and, therefore a zone text amendment is necessary to address if the uses should be explicitly permitted in the Zoning Code; and

**WHEREAS**, if the subject uses are established without zoning regulations, such uses may be inconsistent with surrounding land uses, detrimental to the public health, safety, and welfare, and in conflict with existing regulations; and

**WHEREAS**, Government Code Sections 65858, 36934, and 36937 expressly authorizes the City Council to adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a zoning proposal.

**NOW THEREFORE**, the City Council of the City of Banning does ordain as follows:

**SECTION 1.**     Above-Recitals. The above recitals are true and correct.

**SECTION 2.**     Effectiveness of Ordinance. This Interim Urgency Ordinance shall be effective for forty-five (45) days from and after the date of its adoption, pursuant to the authority conferred upon the City Council by Government Code Section 65858(a), and may thereafter be extended twice provided notice is given pursuant to Government Code section 65090; and, a public hearing is held thereon.

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**SECTION 3. Findings; Declaration of Urgency.** The City Council finds and declares that there is a need to adopt this Interim Urgency Ordinance establishing a moratorium on all new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permits, variance, building permit, business license, occupancy permit and any land use entitlement. The City has received inquiries regarding the establishment of these uses. Based on the following, the City Council declares that this Interim Urgency Ordinance is necessary to protect the public health, safety, and welfare while the City considers revisions to the zoning regulations:

The practice of tattoo and body piercing presents certain public health and safety risks, in particular the potential spread of blood born diseases such as hepatitis. Additionally, the image of tattoo parlors may not be compatible with other uses designed to encourage a family-oriented environment.

Consistent with the City's image as primarily a single-family community, fortune telling and other occult arts may not be compatible with single-family residential neighborhoods and those commercial zones that allow single-family dwellings such as the Downtown Commercial zone.

The unrestricted sale and distribution of food, beverages, merchandise or services from push-cart food units or pedestrians within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians that are exposed to hazards from other vehicular traffic in the vicinity. Also, the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in conformity with health, safety, zoning and land use regulations is contrary to the public welfare.

The establishment of hookah (smoking) lounges produce secondary smoke which can negatively affect workers, passers-by and neighbors, particularly minors, the elderly, sick and disabled. Moreover, smoking lounges may serve as a marketing vehicle for tobacco, which can also have detrimental effects on minors by encouraging them to smoke.

In order to evaluate these uses, City staff needs time to 1) study the effect of said uses on the public; 2) determine which, if any, zoning districts are appropriate for such uses; 3) determine what level of discretionary review is required for such uses. If these uses are allowed to proceed without regulations, they could have potential adverse effects on neighborhoods in the City, which presents a clear and immediate danger to the public health, safety and welfare.

Further, if these uses are established without regulations, such uses might be inconsistent with surrounding uses, detrimental to the public health, safety and welfare, and in conflict with contemplated zoning proposals. The premature establishment of such uses may

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result in significant irreversible change to neighborhood and community character. Based on the foregoing, the City Council declares that this Interim Urgency Ordinance is necessary to protect the public health, safety and welfare while the City considers revisions to the zoning regulations related to these uses.

**SECTION 4.**     **Moratorium.** The City Council hereby declares a moratorium on any new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permit, variance, building permit, business license, occupancy permit and any land use entitlement.

**SECTION 5.**     **Conflicting Laws.** For the term of this ordinance, as set forth in Section 2 above, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other city code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

**SECTION 6.**     **Grandfathering.** This Interim Urgency Ordinance shall only apply to new applications for new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permits, variance, building permit, business license, occupancy permit and any land use entitlement. This Interim Urgency Ordinance shall not apply to any project which has been previously approved by the City or its constituent boards, commissions or officials so long as such approvals remain valid, nor shall it apply to any application for discretionary land use development entitlements, or zoning variances which were approved and that were issued a Certificate of Occupancy by the City prior to the effective date of this Interim Urgency Ordinance.

**SECTION 7.**     **Publication and Posting.** This Ordinance shall be published once in a newspaper of general circulation, printed, published and circulated in the City of Banning, within fifteen (15) days from and after its adoption.

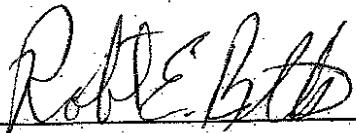
**SECTION 8.**     **CEQA Finding.** The City Council hereby finds that there is no possibility that the adoption of this Interim Urgency Ordinance will have a significant effect on the environment. This finding is supported by the following facts: (1) this ordinance authorizes the undertaking of feasibility and planning studies; and (2) any development which may occur pursuant to the interim standards will not be approved until a complete environmental evaluation of the proposed project has occurred. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14 California Code of Regulations, Section 15262.

**SECTION 9.**     **Vote Required for Adoption of Ordinance.** This Interim Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Banning by Government Code Section 65858, 36934 and 36937, and shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.


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**PASSED, APPROVED, AND ADOPTED** as an INTERIM URGENCY  
ORDINANCE this 13<sup>th</sup> day of April, 2010.

  
Robert E. Botts, Mayor

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

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

**ATTEST:**

  
Marie A. Calderon, City Clerk

**CERTIFICATION:**


I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Urgency Ordinance No. 1422 was duly adopted at a regular meeting of the City Council of the City of Banning, held on the 13<sup>th</sup> day of April, 2010, by the following vote, to wit:

AYES: Councilmembers Franklin, Hanna, Machisic, Robinson, Mayor Botts

NOES: None

ABSTAIN: None

ABSENT: None

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

# Exhibit B

(Urgency Ordinance Status Report)

**REPORT ON MEASURES TAKEN TO ALLEVIATE THE CONDITIONS  
THAT LED TO THE ADOPTION OF URGENCY ORDINANCE NO. 1422**

**May 12, 2010**

The Zoning Code is the primary tool for implementing the goals, policies, and programs of the General Plan. In response to public inquiries, staff has identified that no provision is made for tattoo & piercing, fortune telling, push-cart vendors, and hookah lounge land uses. One of the purposes of the establishment of land use districts as defined in the Zoning Code is to improve the livability of residential neighborhoods while encouraging economic development that supports commercial and industrial businesses. This, in part, is accomplished by permitting or conditionally permitting some uses, and prohibiting other uses in any given land use zone.

Section 17.04.090(A) of the Code states: "All land or structures shall be used and constructed in accordance with the regulations and requirements of this Zoning Ordinance, including obtaining applicable permits prior to use initiation". When individuals approach the business license division to obtain approval for tattoo & piercing, fortune telling, push-cart vending, and hookah lounge, the Planning Division is unable to approve or conditionally approve the use because those uses are not listed in the Zoning Code. When a use is not specifically listed in the Zoning Code, it may be permitted if the Community Development Director determines that the use is similar to other uses listed. However, the Director has determined that the subject uses differ in character substantially from the listed uses; and, therefore a zone text amendment is necessary.

In accordance with Government Code Section 65858, the City Council approved Interim Urgency Ordinance No. 1422 on April 13, 2010, that established a 45 day temporary moratorium on the permitting of Tattoo & Piercing, Fortune Telling, Push-Cart Vendors, and Hookah (Smoking) Lounge land uses. The City Council desires that staff undertake a comprehensive study and analysis of possible revisions to zoning regulations related to the subject land uses.

Upon adoption of Urgency Ordinance No. 1422, and in order to address the existing conditions that led to the adoption of the Ordinance, the Planning Division has initiated the following efforts:

- Initiated a survey of cities within the surrounding area that currently have existing zoning regulations that directly address the subject land uses and determine the effectiveness of those regulations in the respective cities; and
- Initiated internal discussion regarding the subject uses to determine what additional regulatory requirements are necessary including consulting with the Police Department.
- Initiated a survey of existing zones where the different uses may have existed previous to the zoning code adopted in 2006.

The gathering of information and analysis of data to determine the best way to regulate the subject uses is on-going. Extensive review and consideration of the information is required and a comprehensive analysis could not be completed within the time frame outlined in Ordinance No.

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1422 due to budget constraints and reduced staffing. Consequently, the moratorium needs to be extended.

A chart is prepared below that relates how some nearby cities regulate the subject land uses in general terms:

**Comparison Table**

City	Tattoo & Piercing		Fortune Telling		Mobile Vendors		Hookah Lounge	
	Permitted	Type	Permitted	Type	Permitted	Type	Permitted	Type
Beaumont	Y	CUP	N	-	N	-	C	-
Calimesa	N	-	N	-	N	-	N	-
Hemet	Y	P/CUP	Y	CUP	N	-	Y	CUP
Palm Springs	Y	P	Y	P	N	-	N	-
Riverside	Y	P	Y	P	Y	P	N	-
San Jacinto	N	-	N	-	Y	P	N	-

Y = Yes

N = No

P = Permitted by right

CUP = Conditional Use Permit

#### Staff's Concerns

##### **Tattoo & Piercing**

The practice of tattoo and body piercing presents certain public health and safety risks, in particular the potential spread of blood born disease such as hepatitis. Additionally, the image of tattoo parlors may not be compatible with other uses designed to encourage a family-oriented environment. Therefore, strict regulation of this land use is necessary. Staff recommends that regulations be prepared that address the public health and safety risks along with the compatibility with the family-oriented environment that we would encourage.

##### **Fortune Telling**

Consistent with the City's image as primarily a single-family community, fortune telling and other occult arts may not be compatible with single-family residential neighborhoods and those commercial zones that allow single-family dwellings such as the Downtown Commercial zone. Also, there may be concern that fraudulent activities accompany these types of uses; however, it is difficult to control fraudulent activities through land use regulations.

##### **Push-Cart Vendors**

The unrestricted sale and distribution of food, beverages, merchandise or services from mobile food units or pedestrians within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians that are exposed to hazards from other vehicular traffic in the vicinity. Also, the unauthorized use of public property for private commercial activity constitutes a misuse of public property and that similar activity on private property when not in conformity with health, safety, zoning and land use regulations is

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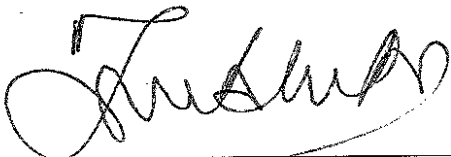
contrary to the public welfare. Push-cart vendors could include ice-cream vendors that would attract children. Parents may be concerned about the identity and background of the vendor that could harm children.

### **Hookah (Smoking) Lounge**

The hookah is a glass or metal water pipe usually highly decorated and shaped somewhat like a bottle or small tank with a long, flexible cord pipe used to smoke tobacco. In most hookah pipes, hot charcoal is used to heat the tobacco. California has yet to enact any law directly addressing use of a hookah, placing hookah regulation in the same category as cigarettes, cigars and other forms of tobacco. A "hookah lounge" is treated as a type of "smoking lounge" and the issue becomes to what extent a city can restrict smoking in a business establishment.

As a matter of law, a city is not required to allow a smoking lounge at all. To the contrary, many states including California have passed anti-smoking laws, effectively banning smoking in most indoor areas such as restaurants and bars. In addition, public policy strongly discourages smoking and encourages smokers to terminate their smoking habit. Also, smoking lounges produce secondary smoke which can negatively affect workers, passers-by and neighbors, particularly minors, the elderly, sick and disabled. Smoking lounges too may serve as a marketing vehicle for tobacco, which can also have detrimental effects on minors by encouraging them to smoke.

An additional analysis of the aforementioned concerns, including contacting other agencies staff to discuss issues that have arisen in their community, is required in order to prepare recommendations regarding potential revisions to zoning regulations for consideration by Planning Commission and City Council.



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Zai Abu Bakar  
Community Development Director

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Andy Takata  
City Manager

## CITY COUNCIL AGENDA

**Date:** May 25, 2010

**TO:** Honorable Mayor and City Council

**FROM:** Fred Mason, Electric Utility Director

**SUBJECT:** Resolution 2010-22 Approval of the Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement

**RECOMMENDATION:** The City Council adopt Resolution 2010-22 approving the Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement, attached herewith as Exhibit "A" and "B" respectively.

**JUSTIFICATION:** On May 12, 2009, the City Council adopted the "Three Year Strategies with One Year Goals Supporting the Vision and Mission Statements" document. Approval and implementation of the Economic Development Electric Rate Schedule ("ED Rate") supports the goals outlined in said document.

**BACKGROUND:** The "Three Year Strategies with One year Goals Supporting the Vision and Mission Statements" is the document the City Council developed and adopted to provide direction to staff to implement its vision for the City over the next three years.

One of the goals is to "[d]evelop and implement a strategy and plan to promote and recruit retail businesses citywide." The proposed ED Rate is a tool which will enable the City to attract larger commercial and industrial customers to Banning by offering a discounted startup rate. The rate would also apply to existing qualifying customers that expand their existing business and thereby increase their electric demand and energy consumption by a minimum required amount (proposed to be 200 kW increase in demand).

Banning Electric Utility ("Utility") delivers electricity to customers through distribution and transmission facilities. These facilities represent capital investment whose dollars are spread amongst all customers and recovered over a long-term period. Energy is produced and/or obtained from generation facilities through long-term contracts to meet base load needs, with summer peaking needs obtained through short-term contracts or on the open market. The Utility has a number of fixed costs which must be paid regardless of customer demand or load. Additional revenue generated by expanded load (new customers) will reduce the costs to existing customers, as the fixed costs will be allocated over a larger group of customers. Cost recovery for these fixed costs is spread over several decades, so it would be possible to reduce or eliminate these charges for new customers for a limited timeframe. This benefit could be made available to customers bringing significant new load to the Utility, if it were expected there would be a measureable long-term increase in revenues. Over a longer period, a substantial increase of new customer load would help reduce the overall distribution and transmission costs for all customers. Therefore, it would be reasonable to defer charging full costs for fixed distribution and transmission service to new large customer load for an initial two year period, if it were determined that the customer would permanently locate in Banning's service territory.

The proposed ED Rate requires that the customer execute the standard Banning Economic Development Rate Agreement, attached herewith as Exhibit "B". The Agreement is a five-year contract that provides a substantial rate reduction in the first two years, while still recovering all variable costs to serve the new load during the initial years. The customer would transition to full tariff rates in year three, where they would remain for the duration of the Agreement. If the customer terminates their service at any time during the five-year agreement, they must pay the City the total amount of the discounted portion of the rate.

In addition to encouraging economic development, the ED Rate also would increase local job growth and expand the City's tax base. Many major utilities in California (both municipal and investor-owned) have some form of an economic development rate. Some of the challenges considered when proposing such a rate are:

1. Ensuring that the rate and term provide a balance between cost recovery and long-term revenue enhancement for the electric utility;
2. Offering meaningful savings to customers that will influence decisions to move to Banning, or expand existing facilities located within Banning; and
3. Ensuring that the economic development rate has no negative impact on other customers.

The ED Rate is targeted towards larger, industrial-sized customers (minimum 200 kW demand) as their large electric loads assist in reducing overhead costs to all utility customers. Smaller customers are already included in the City's power planning process, and do not bring unanticipated load or revenues that provide meaningful benefits to other utility customers.

The proposed ED Rate would be applicable to two customer types: 1) new commercial or industrial customers with a minimum monthly demand of at least 200 kW; and 2) existing commercial or industrial customers that increase their monthly demand by 200 kW or 20 percent, whichever is greater. An existing customer's current peak demand (for calculating the 200 kW or 20 percent criteria) will be determined by averaging the annual peak demand of the past three years. If a customer has not had service for at least three years, the maximum peak for the entire service period will be used.

Typical customers at the 200 kW size could be a full-sized supermarket, a large manufacturing facility, a refrigerated distribution warehouse, or a single business occupying a large office building.

The proposed ED Rate would provide a 25 percent rate reduction off the applicable Energy Charges for Schedule C and Schedule TOU rates for the first two years of the five-year Banning Economic Development Rate Agreement period. All other charges and conditions applicable to Schedule C and Schedule TOU customers would apply as shown in the corresponding rate schedules.

Staff recommends City Council approval of the proposed Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement, attached herewith as Exhibit "A" and "B" respectively, as a way to increase economic development and expansion within the City of Banning. If approved, the ED Rate would become effective June 1, 2010.

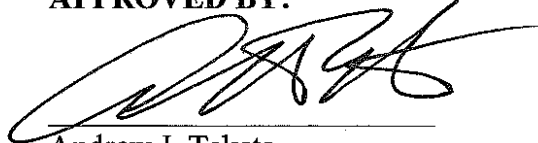
**FISCAL DATA:** There is no negative fiscal impact by adopting these rates. Any new or expanding load customer would immediately pay all power and transmission costs, while phasing in full distribution costs over a two-year period.

**RECOMMENDED BY:**



Fred Mason  
Electric Utility Director

**APPROVED BY:**



Andrew J. Takata  
City Manager



**RESOLUTION NO. 2010-22**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
APPROVING THE ECONOMIC DEVELOPMENT ELECTRIC RATE SCHEDULE  
AND THE BANNING ECONOMIC DEVELOPMENT RATE AGREEMENT**

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

**WHEREAS**, the City Council adopted the "Three Year Strategies with One Year Goals Supporting the Vision and Mission Statements" document on May 12, 2009, which provided direction to staff to implement the Council's vision for the City over the next three years; and

**WHEREAS**, approval of the Economic Development Electric Rate supports the goal outlined in said document to "[d]evelop and implement a strategy and plan to promote and recruit retail businesses citywide"; and

**WHEREAS**, the Economic Development Electric Rate Schedule and Banning Economic Development Rate Agreement, attached herewith as Exhibit "A" and "B" respectively, will not have a negative impact on other Banning Electric Utility customers, and will provide a tool to the City to attract larger commercial and industrial businesses to Banning by offering a discounted startup electric rate;

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

1. Adopt Resolution No. 2010-22 approving the Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement, and authorize the City Manager or his/her designee to implement said Rate Schedule effective June 1, 2010, and execute and administer said Agreement with qualified Banning Electric Utility commercial and industrial customers.
2. Authorize the Mayor to execute Resolution No. 2010-22. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 25<sup>th</sup> day of May 2010.

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Robert E. Botts, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT:

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

SCHEDULE ED

ECONOMIC DEVELOPMENT RATE ("ED RATE")

**APPLICABILITY**

Commercial or industrial end-use customers that would otherwise receive service under electric rate Schedule C or Schedule TOU, may take advantage of the Economic Development Rate ("ED Rate") as a New Customer or Expanded Load Customer. This ED Rate is applicable to all or part of the services provided to New Customers and Expanded Load Customers, as such terms are defined herein.

1. A New Customer shall be a customer seeking to locate a new business or relocate an existing business (not currently located in the City of Banning) within the City of Banning's service territory, where said business has a minimum monthly electrical demand of at least 200 kW based upon the business' past electrical demand or reasonable projections of such demand, as determined by the Electrical Utility Director.
2. An Expanded Load Customer shall be an existing City of Banning customer that is adding new load to Banning by the greater of 20 percent of the existing customer's Current Peak Demand or 200 kW based upon the business' past electrical demand or reasonable projections of such demand, as determined by the Electrical Utility Director. Current Peak Demand is determined by averaging the annual peak demand of the past three years. If a customer has not had service for at least three years, the maximum peak for the entire service period will be used. The expanded load can be at the customer's current site, or at a new site within the Banning service territory. The ED Rate will only be applied to the expanded load as determined in Section 5 below.

CHARACTER OF SERVICE

The service provided hereunder shall be alternating current with regulated frequency of 60 hertz, three-phase, or a combination single and three-phase served through one meter, at a standard voltage not to exceed 480 volts, or as may be specified by the Electric Division. To be eligible to participate all customers must have a demand meter.

TERRITORY

Within the area served by the City of Banning.

RATES

Except as provided herein, or in the Economic Development Rate Agreement, all charges and provisions of the customer's otherwise applicable rate schedule (Schedule C or Schedule TOU) shall apply. The applicable Energy Charge under the customer's otherwise applicable rate schedule will be reduced as follows:

Year 1 – 25%  
Year 2 – 25%  
Year 3 – 0%  
Year 4 – 0%  
Year 5 – 0%

### SPECIAL CONDITIONS

1. Term: Economic Development Rate Agreements entered into under this Schedule shall be for a single five-year term.
2. Approval: Application of this Rate Schedule shall be subject to the approval of the Electric Utility Director, based on meeting the eligibility criteria outlined herein.
3. Agreement: The customer must sign a standard Banning Economic Development Rate Agreement in order for the rates under this Schedule to be applicable.
4. Minimum Load: Customers qualifying under this Schedule as a New Customer or an Expanded Load Customer must agree to maintain a minimum level of load for five years from the date the service is first rendered under this Schedule and must, reimburse Banning for all rate reductions received under this Schedule, if the customer fails to maintain the required minimum load during such five-year term as set forth in the Economic Development Rate Agreement.
5. Base Period Usage: Base Period Usage shall be established and agreed to in the Economic Development Rate Agreement for Expanded Load Customers. Base Period Usage shall be the average monthly energy use and demand for the customer during the last three years of service to the customer, from the date ending the last payment period before the date of the Agreement. Expanded load qualifying for the rate under this Schedule shall be measured as the difference between the new monthly, meter documented energy use and demand, and the Base Period Usage.
6. State Mandated Public Benefits Charge: All bills rendered under this Schedule shall be subject to the Public Benefits Charge as established by the City Council.
7. Miscellaneous Fees and Charges: Rates charged pursuant to this Schedule shall be subject to any and all fees and charges per the customer's otherwise applicable rate schedule.
8. Expanded Load: Expanded Load Customers applying for this rate must demonstrate to the satisfaction of the Electric Utility Director that the expanded load is new within the Territory of Banning, and not just to the service address.
9. Effective Date: The effective date of the Economic Development Rate Agreement shall commence within 12 months from the date of the Electric Utility Director's approval, or the Agreement becomes null and void. The Agreement becomes effective upon execution by the parties, and the Economic Development Rate commences upon written notice by customer, and coincides with the customer's normal billing cycle.
10. Reapplication: Customers who have received service under the Economic Development Rate are eligible to reapply for the rate as an Expanded Load Customer 12 months after their current Economic Development Rate Agreement has expired, if they meet the criteria therefore.
11. Restrictions: Residential customers and federal, state or local governmental agencies are not eligible to apply for service under this Schedule.

**ECONOMIC DEVELOPMENT RATE AGREEMENT**

**FOR NEW OR EXPANDED LOAD ELECTRIC SERVICE CUSTOMER**

**(CUSTOMER'S NAME)**

THIS ECONOMIC DEVELOPMENT RATE AGREEMENT for New or Expanded Load Electric Service Customer is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ ("Customer"), and the CITY OF BANNING ("Banning"), a California general law city and municipal corporation organized and existing under the laws of the State of California, each hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

**RECITALS**

This Agreement is made with reference to the following facts, among others:

A. Customer is a commercial or industrial end-use electric customer that is currently served by Banning and wishes to expand its load or is a New Load Customer locating in Banning's service territory, and that meets the applicability requirements of Banning's Electric Rate Schedule ED ("Schedule ED").

B. Banning owns and operates a municipal utility, engaging in the business of generating, transmitting and distributing electric energy to its retail customers and others.

C. Customer desires to enter into this electric service agreement pursuant to Schedule ED in order to receive a discount for Electric Service purchased during the first two (2) years of this five (5) year Agreement.

D. Banning desires to provide this discount to Customer to encourage Customer to expand existing or locate new business operations in Banning's service territory, thereby generating additional revenue from New and Expanded Load Customers, which will reduce the costs to existing customers, as Banning's fixed costs will be allocated over a larger group of customers.

**AGREEMENT**

In consideration of the mutual covenants and promises in this Agreement, the Parties agree as follows:

1. **DEFINITIONS.** Terms used herein with initial capitalization, whether in singular or plural, shall have the meaning set forth in the Electric Rules except as defined below:

1.1 Agreement: This Economic Development Rate Agreement for New or Expanded Load Electric Service Customer between Customer and Banning.

1.2 Authorized Representative: The representative designated by each Party, in accordance with Section 13.1, to act on such Party's behalf with respect to those matters specified in this Agreement.

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1.3 Base Period Usage: Base Period Usage for Expanded Load Customers shall be the average monthly energy use and demand for the customer during the last three years.

1.4 Commencement Date: The date on which Banning shall begin charging Customer for Electric Service at the Electric Rate as such date may be established pursuant to Section 2.1 and may be tolled pursuant to Section 10.3, but not to exceed twelve (12) months from the Effective Date.

1.5 Current Peak Demand: As determined by averaging the Customer's annual peak demand of the past three years. If a Customer has not had service for at least three years, the maximum peak for the entire service period will be used.

1.6 Customer Sites: Customer's metered locations to which Banning shall provide Electric Service under this Agreement as listed in Exhibit "A".

1.7 Effective Date: The date this Agreement is executed by both parties, as set forth in the introductory paragraph of the Agreement.

1.8 Electric Rate: Those Customer's Otherwise Applicable Rate Schedule for Electric Service, less the discounts set forth in Subsection 4.2.

1.9 Electric Rules: Applies to all, or any combination of, Banning's "Electric Rules & Regulations", "Electric Utility Rate Schedule", and "Miscellaneous Utility Fees", as modified from time to time and adopted by Banning's City Council.

1.10 Electric Service: Energy, demand, substation, distribution and transmission service necessary to deliver such Energy to Customer's Points of Interconnection, and such other services that Banning is required to provide pursuant to this Agreement, the Electric Rules and any programs or services mandated by a state or federal regulatory agency, or Banning's City Council.

1.11 Energy: Electric energy, expressed in kilowatt-hours.

1.12 Expanded Load: The amount of qualifying load eligible for discount under this Agreement and shall be measured as the difference between the new monthly, meter-documented energy use and demand, and the Current Peak Demand.

1.13 Expanded Load Customer: A commercial or industrial customer currently served by Banning meeting the qualifications set forth in Schedule ED and expanding business operations within Banning's electric service area that will add new load and increase their average monthly demand by the greater of two hundred (200) kW or twenty percent (20%) over their Current Peak Demand.

1.14 Electric Utility Director: The Director of the City of Banning's Electric Utility Department.

1.15 Interest Rate: The lesser of ten percent (10%) per annum or the maximum rate permitted by law.

1.16 Labor Dispute: A strike, walkout, lockout or other dispute between a Party's labor force and the Party.

1.17 Liquidated Damages: Damages owed by Customer to Banning as provided in Section 8 of this Agreement.

1.18 Minimum Charge: The amount as defined in Customer's Otherwise Applicable Rte Schedule.

1.19 Minimum Load: The minimum metered kilowatt input at the Point of Interconnection during one calendar month as averaged over a rolling one year period, as referenced in Subsection 4.5 below.

1.20 New Load Customer: A commercial or industrial customer meeting the qualifications set forth in Schedule ED, locating in Banning's electric service territory.

1.21 Otherwise Applicable Rate Schedule: Banning's published electric rate Schedule TOU or electric rate Schedule C, as applicable.

1.22 Point of Interconnection: The defined point where Banning's electric distribution facilities interconnect with Customer's account meters listed, and as such points may be depicted in Exhibit A.

1.23 Public Benefit Charge: The surcharge imposed on all Banning electric utility customers as established by Banning's City Council from time to time pursuant to California Public Utilities Code Section 385.

1.24 Term: The five (5) year period of this Agreement during which the Electric Rate is applicable beginning on the Commencement Date.

1.25 Time Period: The On-Peak, Mid-Peak or Off-Peak energy billing period as defined in the applicable Electric Utility Rate Schedules.

1.26 Uncontrollable Force: Any cause beyond the control of the Party affected and asserting excuse from performance, including but not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or inaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority which by exercise of due diligence such Party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome. The Party claiming such Uncontrollable Force must give the other Party at least ten (10) days written notice of the commencement of such cause, and keep the other Party informed concerning the continuance of such cause.

## **2. COMMENCEMENT DATE; TERM.**

2.1 Commence After Notice: Banning shall begin providing Electric Service at the Electric Rate with the next regular billing period after Customer notifies Banning in writing of the date that Electric Service should begin under Schedule ED ("Commencement Date"), which date shall be not more than twelve (12) months following the Effective Date.

2.2 Estimated Date: Customer estimates that the Commencement Date for Electric Service under Schedule ED shall commence with the next regular billing period beginning after \_\_\_\_\_ and shall provide Banning with written notice of any change in such date no later than five (5) business days before such date. The Estimated Date shall be the date on which customers has a good faith belief that it shall meet the Minimum Load obligations contained in Section 4.5 either as a New Customer or Existing Customer.

2.3 Term: Except as provided in Subsection 12.3, the Term of this Agreement shall be five (5) years from the Commencement Date.

2.4 Termination: This Agreement may be terminated (subject to payment of Liquidated Damages) upon written notice as follows:

2.4.1 Termination at Customer's Request: On the sixtieth (60th) day after Banning receives notice by Customer requesting termination of this Agreement.

2.4.2 Termination for Nonpayment: On the thirtieth (30th) day after Banning sends notice of nonpayment to Customer, if Customer fails to pay any amount due hereunder, under Schedule ED or the Electric Rate Schedules.

2.4.3 Termination for Noncompliance: On the fifth (5th) day after Banning sends notice of noncompliance to Customer, if Customer fails to comply with any term or condition of Schedule ED or this Agreement, or if any representation made by Customer in this Agreement is untrue in any material respect, or if Customer ceases the operations to which this Agreement applies or moves its operations out of Banning's service territory.

2.4.4 Termination for Ineligibility: On the fifth (5th) day after Banning sends notice of ineligibility to Customer, if Banning determines that Customer was not eligible for Schedule ED when the Agreement was signed, that Customer has become ineligible for Schedule ED, or that any material statement in Customer's Affidavit of Eligibility pursuant to Section 3 submitted to the Electric Utility Director was untrue.

2.4.5 Termination for Failure to Maintain Minimum Load: On the ninetieth (90th) day after Banning sends such notice to Customer of failure to maintain Minimum Load, if Customer fails to maintain its Minimum Load during any regular billing period during the Term of this Agreement and if during such ninety (90) day notice period Customer fails to increase and maintain its load to the Minimum Load and fails to demonstrate to Banning's satisfaction that it will continue to maintain its Minimum Load for the remaining Term of this Agreement.

2.4.6 Termination for Failure to Commence Service: Banning may terminate this Agreement effective upon Banning giving written notice to Customer, if Customer does not begin service within twelve (12) months after the Effective Date.

2.5 Obligations Continuing: Termination of this Agreement shall not relieve either Party of its obligations incurred prior to termination.

2.6 Existing Rate Schedule: Upon termination of this Agreement, Banning's obligations to provide Electric Service to Customer and the rates and rules applicable to

Banning's provision of such Electric Service shall be pursuant to Banning's then existing Electric Rate Schedules.

2.7 Nonrenewable: This Agreement is not renewable at the expiration or termination of its Term.

### 3. CUSTOMER AFFIDAVIT OF ELIGIBILITY.

Customer represents and warrants to Banning that it satisfies the criteria for Schedule ED eligibility as indicated by Customer's initials below [Customer must initial Subsection 3.3 and one of Subsections 3.1 or 3.2:

3.1 ( ) New Load Customer that:

3.1.1 has a projected minimum monthly electrical demand of at least two hundred (200) kW; or

3.2 ( ) Expanded Load Customer is an existing customer of Banning that:

3.2.1 Covenants to increase its average monthly demand by the greater of twenty percent (20%) of the existing customer's Current Peak Demand or 200 kW within 90 days of receiving Electric Service under Schedule ED, and

3.2.2 Customer represents that all documents that it has provided to Banning as evidence of Customer's ability to maintain such a demand increase during the Agreement Term are true and correct.

3.3 ( ) Customer represents and warrants under penalty of perjury under the laws of the State of California that all covenants, statements of facts, representations, and documents provided to Banning and the Electric Utility Director with respect to Customer's eligibility for Schedule ED are true and correct.

### 4. ELECTRIC SERVICE AND RATES.

4.1 Electric Service Requirements: Customer agrees to purchase from Banning and Banning agrees to sell to Customer at the Electric Rate set forth herein, all of Customer's Electric Service requirements at Customer's Site(s) including Electric Service necessary to deliver such Energy to Customer's Points of Interconnection, throughout the Term of this Agreement. Except as expressly provided in this Agreement, Banning shall provide such Electric Service in accordance with the Electric Rules. In the event any term of this Agreement adds to, varies or contradicts the Electric Rules, the terms of this Agreement shall prevail.

4.2 Electric Rate: Customer shall pay Banning for Electric Service at Customer's Otherwise Applicable Rate Schedule beginning with the Commencement Date during the period set forth below. The discount set forth below applies towards the applicable Energy Charge of Customer's Otherwise Applicable Rate Schedule for New Load Customers and only the Expanded Load for existing Customers:

Year 1	25%
Year 2	25%



Year 3	0%
Year 4	0%
Year 5	0%

In addition to the Electric Rate, Customer shall pay the Miscellaneous Fees and Taxes and Miscellaneous Charges, as set forth in Subsections 4.3 and 7.2, respectively.

4.3 Miscellaneous Fees and Taxes: All charges for Electric Service pursuant to this Agreement shall be subject to Banning's Public Benefit Charges, any applicable state or federal energy Tax, and any other governmental taxes, duties, or fees, as may be revised from time to time by the relevant regulatory authority, applicable to Electric Service provided by Banning.

4.4 Service to Others: The Electric Service provided herein is expressly reserved for Customer's sole use. Customer is prohibited from transferring, providing or reselling all or any portion of such service to any third party or parties.

4.5 Covenant to Maintain Minimum Load: By initialing Subsection 3.1 or 3.2 above, respectively, Customer covenants to maintain the Minimum Load designated in Subsection 4.5.1 or 4.5.2, respectively, throughout the Term of this Agreement.

4.5.1 The Minimum Load for a New Customer representing and warranting its eligibility for Schedule ED under Subsection 3.1 of this Agreement shall be a minimum monthly demand of at least two hundred (200) kilowatts.

4.5.2 The Minimum Load for a Existing Customer representing and warranting its eligibility for Schedule ED under Subsection 3.2 of this Agreement shall be the Minimum Load set forth in Customer's application for the ED rate, maintained throughout the Term of the Agreement, provided that Customer's average monthly demand shall increase by the greater of Twenty Percent (20%) over the customer's Current Peak Demand or two hundred (200) kW, by no later than 90 days after beginning to receive service under Schedule ED.

## 5. METERING SERVICES.

5.1 Existing Accounts: Banning shall maintain, service and replace (as needed), and retain ownership of all electric meters at the existing Customer Site(s) as reflected in Exhibit A. These meter services and meters shall be provided free of charge, so long as such meters are standard meters consistent with those provided to similar Banning non-residential customers.

5.2 New Accounts: This Agreement applies only to the meters and accounts at Customer's Site existing as of the Effective Date and reflected in Exhibit A. All new, modified or upgraded service, meters, and accounts shall be added in accordance with the terms, conditions, costs, and rates in the Electric Rules.

## 6. BILLING AND PAYMENT.

6.1 Procedure: Unless otherwise specified in this Agreement, all billing for Electric Service shall be rendered and payments collected in accordance with the Electric Rules.

6.2 Adjustments of Bills for Undercharges: Banning reserves the right to adjust any Customer bill for undercharges, computed and billed in accordance with the Electric Rules in effect at the discovery of an error.

## **7. PUBLIC BENEFIT AND MISCELLANEOUS CHARGES.**

7.1 Public Benefit Charge: In accordance with the requirements of California Public Utilities Code section 385, Banning's City Council adopted a usage based Public Benefit Charge equal to 2.85% of electricity costs, which is generally applicable to all Banning electric customers. Customer shall pay the Public Benefit Charge in addition to the Electric Rate, on a monthly basis so long as the Public Benefit Charge remains in effect in Banning.

7.2 Miscellaneous Charges: Customer shall pay any other applicable new fees or surcharges imposed by Banning on other non-residential customers in accordance with Customer's Otherwise Applicable Rate Schedule, unless specifically exempted by Banning's City Council, after the Effective Date of this Agreement, in the same manner and amounts, as set forth in the Electric Rules, and any premiums or surcharges as established by Banning's City Council in response to federal or state climate change laws, renewable portfolio standards, or other mandated legislation. These charges shall include but not be limited to charges to mitigate the impacts of greenhouse gas emissions or "green power" premiums.

## **8. LIQUIDATED DAMAGES.**

8.1 Liquidated Damages for Early Termination: Upon termination of this Agreement before the end of its Term, Customer shall pay Banning Liquidated Damages. The payment of Liquidated Damages is required to ensure that neither Banning nor its ratepayers are financially or otherwise damaged if this Agreement is prematurely terminated before the end of its Term.

8.2 Reasonable Approximation: It would be extremely difficult for the Parties to identify the amounts of increased or additional costs attributable to early termination of this Agreement. The Parties agree the Liquidated Damages specified herein are a reasonable approximation of damages which Banning and its ratepayers may incur as a result of such early termination, and that the damage amount does not represent a penalty.

8.3 Amount: Liquidated Damages under this Agreement shall be an amount equal to the difference between (i) the amount the Customer would have paid for its Electric Service if billed at the Otherwise Applicable Rate Schedule from the Commencement Date to the date of termination, and (ii) the amount billed to Customer under this Agreement and Schedule ED during the same period plus interest (at the Interest Rate), retroactively applied on the foregoing amounts from the original billing due dates to the date of payment.

8.4 Revert to Applicable Rates: After termination of this Agreement, Customer shall be billed at the Otherwise Applicable Rate Schedule.

8.5 Security: Prior to the Effective Date or at any time during the Term, Banning, through its Authorized Representative, may in its discretion require Customer to establish a letter of credit or other security as a condition to providing Electric Service under Schedule ED to secure repayment of any Liquidated Damages.

## 9. ASSIGNMENT OF INTERESTS.

9.1 Approval of Assignment Required: This Agreement is personal to Customer as a New Load or an Expanded Load Customer served by Banning, and Customer shall not assign or transfer this Agreement or assign or transfer any privilege hereunder, or interest herein, in whole or in part ("assign") without the prior written consent of Banning, which consent shall not be unreasonably withheld. Any attempt by Customer to make such an assignment without Banning's consent shall be void ab initio, shall confer no right on any third party, and shall entitle Banning to terminate this Agreement on five (5) days written notice to Customer pursuant to Subsection 2.4.3.

9.2 Grounds for Disapproval: It shall not be unreasonable for Banning to withhold its consent to a request for assignment that does not meet all of the following requirements:

9.2.1 The request to Banning must be given in writing no less than sixty (60) days prior to the proposed effective date of such assignment;

9.2.2 The written request must include documentation satisfactory to Banning that the proposed assignee's Electric Service usage at the Customer's Site for the Term of the Agreement shall be substantially identical to or greater than Customer's Energy Usage;

9.2.3 The written request shall include documentation and security, satisfactory to Banning, that the assignee's creditworthiness is as good as or better than Customer's creditworthiness as of the Effective Date; and

9.2.4 Assignee shall execute such documentation as Banning shall require expressing assignee's assumption of all of Customer's obligations, duties and liabilities under this Agreement.

9.2.5 Customer makes payment of \$500.00 to Banning in advance of Banning's review of the assignment request as compensation for Banning's administrative costs of such review.

## 10. UNCONTROLLABLE FORCE.

10.1 No Default for Uncontrollable Force: No Party shall be considered to be in default in the performance of any obligation under this Agreement when and to the extent that failure of performance shall be caused by an Uncontrollable Force. Provided that no Party shall be relieved by operation of this section of any obligation to pay any payments then due or for Electric Service provided prior to the Uncontrollable Force.

10.2 Conditions for Excusing Performance: A Party rendered unable to fulfill all or any part of its obligations by reason of an Uncontrollable Force shall be excused from its performance affected by the Uncontrollable Force to the extent the following conditions are satisfied:

10.2.1 The suspension of performance is of no greater scope and no longer duration than is required by the Uncontrollable Force.

10.2.2 The non-performing Party uses its best efforts to cure its inability to perform; provided that this Subsection shall not require the settlement of any labor dispute on terms, which, in the sole judgment of the Party involved in the labor dispute, are contrary to its interest. Both Parties understand and agree that the settlement of labor disputes shall be at the sole discretion of the Party having the labor dispute.

10.2.3 The non-performing Party shall give prompt written notice of the occurrence and particulars of the Uncontrollable Force, no later than ten (10) days following commencement of the claimed Uncontrollable Force, and the date on which the non-performing Party gives such notice shall be the date from which the non-performing Party's performance is excused. The notice shall estimate the period of continuance of the Uncontrollable Force.

10.2.4 The non-performing Party shall keep the other Party informed concerning the continuance of the delay and the conclusion thereof.

10.3 Tolling of Agreement: Upon the occurrence of an Uncontrollable Force, as provided in this Section 10, that prevents Customer from performing all or any part of its obligations under this Agreement, Customer may request that Banning suspend the terms of this Agreement for the duration of the Uncontrollable Force. Customer will be billed at the Otherwise Applicable Rate Schedule for the duration of the suspension of this Agreement. When Customer is able to resume its obligations under this Agreement, Customer shall give Banning written notice to that effect immediately. Resumption of the terms of this Agreement shall commence with the next regularly scheduled billing period. In addition, the Term of this Agreement will be extended for up to twelve (12) months beyond the Term originally established in this Agreement by the length of time this Agreement was suspended.

10.4 Termination for Other Cause: The occurrence of an Uncontrollable Force shall not: (i) prevent Banning from terminating this Agreement in accordance with Subsections 2.4.2, 2.4.3, 2.4.4, 2.4.5, or 2.4.6, or (ii) except as provided under Subsection 10.3, extend the period any level of discount is available as provided in Subsection 4.2.

## 11. INDEMNITY.

11.1 Indemnity and Hold Harmless: Except for any liens, claims, costs, damages, liability or loss resulting from Willful Action, as defined herein, Customer agrees to indemnify, protect, defend, and hold harmless Banning, and Banning's employees, officers, managers, agents and City Council Members from and against any claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including reasonable attorney and expert fees), judgment, civil fine and penalties, liabilities or losses of any kind or nature whatsoever whether actual, threatened or alleged, which arise out of, pertain to, or relate to, or are a consequence of, or are attributable to, or are in any manner connected with this Agreement but only in proportion to and to the extent such liens, claims, damages, liability or loss are caused by or result from the negligent acts, errors, or omissions of Customer, its employees, officers, or agents. This indemnification provision shall apply to any acts, omissions, negligence, recklessness, or willful misconduct, whether active or passive, on the part of the Customer or anyone employed or working under the Customer.

11.2 Willful Action: "Willful Action" shall be defined as an action taken or not taken by a Party at the direction of its directors, officers, or employees where:

11.2.1 An action is knowingly or intentionally taken or not taken with conscious indifference to the consequences thereof or with intent that injury or damage would probably result therefrom; or

11.2.2 An action has been determined by final arbitration, judgment, or judicial decree to be a material default under this Agreement and occurs beyond the time specified for curing such default or, if no time to cure is specified therein, occurs or continues thereafter beyond a reasonable time to cure such default; or

11.2.3 An action is knowingly or intentionally taken or not taken with the knowledge of material default under this Agreement.

11.3 Limitation: Willful Action does not include any act or failure to act which is merely involuntary, accidental, negligent, or performed (or not performed).

11.4 Survival: The provisions of this Section 11 shall be binding upon the Parties to the full extent permitted by law. The obligations set forth herein are binding on the successors, assigns and heirs of Customer and shall survive termination of this Agreement.

## **12. RELATIONSHIP OF PARTIES, THIRD PARTIES AND SUCCESSORS.**

12.1 Partnership: This Agreement does not create any association, partnership, joint venture or agency between the Parties or their successors in interest. Any correspondence or other references to "partner" or other similar terms will not be deemed to alter, amend or change the relationship between the Parties unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the Parties as to a new, specifically defined legal relationship.

12.2 Dedication of Facilities: No undertaking by one Party to the other Party under this Agreement shall constitute the dedication of the electric system or any portion thereof by the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

12.3 Third Party Beneficiaries: This Agreement shall not be construed to create rights in or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established in this Agreement.

12.4 Successors: This Agreement shall be binding upon and inure to the benefit of the successors, heirs, administrators, executors and assigns of the Parties.

## **13. REPRESENTATIVES AND NOTICES.**

13.1 Representatives: Upon the Effective Date of the Agreement, the Electrical Utilities Director for Banning, and person identified on the execution page for Customer shall be the Authorized Representatives who will act on its behalf in the implementation of this Agreement. Either Party may at any time change, via written notice, the designation of its Authorized Representative to the other Party.

13.2 Form of Notice: Any notice and other communication required or permitted to be given under this Agreement shall be deemed given: (i) when hand delivered; or (ii) one (1) business day after pickup by Federal Express or similar overnight delivery service properly addressed as provided below; or (iii) three (3) business days after such notice or communication shall have been deposited with the United States Postal Service, postage prepaid and properly addressed as provided below; or (iv) when sent by facsimile transmission to the fax numbers provided below, with receipt of such fax confirmed telephonically, provided that on the same day such notice or communication shall also be hand delivered or sent by overnight delivery pursuant to this Subsection.

13.3 Addresses of Parties: Notices to Banning should be given to: Electric Utility Director, City of Banning, 99 East Ramsey Street, Banning, CA 92220; Notices to Customer shall be given to the addressee at the location shown on the execution page.

13.4 Changes of Address: Either Party may change such address by giving notice to the other Party as provided herein.

#### **14. ENFORCEMENT**

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

14.2 Governing Law: This Agreement shall be interpreted, governed by, and construed under the laws of the State of California or the laws of the United States as applicable without regard to the conflicts of laws or rules thereof. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided in this Agreement shall be tried in a court of proper jurisdiction in the County of Riverside, State of California, and the Parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

14.3 Damage Limitation: Banning shall not be liable for any consequential, incidental, indirect, or special damages, whether in contract, tort, or strict liability including, but not limited to, lost profits, property damage, personal injury and loss of power, arising out of or in any way related to power outages, other electric service interruption(s), Banning's performance or nonperformance of its obligations under this Agreement or termination of this Agreement.

14.4 Attorney Fees: If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

14.5 Disputes: All disputes regarding questions of fact, opinions or interpretation of provisions in this Agreement shall be submitted to the Authorized Representatives. If the Authorized Representatives are unable to resolve the dispute, the matter shall be referred to the individuals designated to receive notices pursuant to Section 13. Nothing

in this Agreement precludes either Party from taking any lawful action it deems appropriate to enforce its rights.

14.6 Waivers: Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

## 15. MISCELLANEOUS.

15.1 Integration and Amendment: This Agreement contains the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous oral or written communications of the Parties. Neither Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty of the other Party outside those expressly set forth in this Agreement. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against either Party, but shall be interpreted in a manner that most accurately reflects the original intent of the Parties, and is consistent with the nature of the Parties' rights and obligations. No modification of this Agreement shall be valid or binding unless in writing duly signed by both Parties.

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

15.3 Exhibits: All documents referred to below and attached to this Agreement as Exhibits are incorporated into and made a part of this Agreement. Exhibit "A": Customer Site(s); Metered Accounts

15.4 Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF BANNING, a municipal  
corporation

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
David Aleshire, City Attorney

**CUSTOMER:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Address for Notice Representative:

Name: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Two signatures are required if a corporation**

**NOTE: CUSTOMER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CUSTOMER'S BUSINESS ENTITY.**

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## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER  
\_\_\_\_\_  
TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_  
\_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL  
☐ CORPORATE OFFICER  
\_\_\_\_\_  
TITLE(S)

☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_  
\_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

CUSTOMER SITE(S); METERED ACCOUNTS

## CITY COUNCIL AGENDA

**Date:** May 25, 2010

**TO:** Honorable Mayor and City Council

**FROM:** Fred Mason, Electric Utility Director

**SUBJECT:** Resolution 2010-23 Approval of the Net Metering Surplus Electric Rate Schedule and the Revised Interconnection Agreement for Net Energy Metering

**RECOMMENDATION:** The City Council adopt Resolution 2010-23 approving the Net Metering Surplus Electric Rate Schedule, attached herewith as Exhibit "A", and the revised Interconnection Agreement for Net Energy Metering (Purchase) and Interconnection Agreement for Net Energy Metering (Lease), attached herewith as Exhibit "B" and "C" respectively.

**JUSTIFICATION:** Since 1995 there have been a number of legislative bills passed which have provided mandates to electric utilities regarding net metering customers. The City of Banning's Electric Utility ("Utility") has an Interconnection Agreement for Net Energy Metering, which is executed with every net metering customer, and the Utility is taking the necessary measures to ensure all net metering regulatory requirements are met, including the requirement to implement an electric rate to compensate for surplus electricity from net metering customers. These changes have required revisions to the Interconnection Agreement for Net Energy Metering to incorporate the legislative requirements.

**BACKGROUND:** Assembly Bill 920 ("AB 920") was signed into law on October 11, 2009 and amended §2827 of the Public Utilities Code, which pertains to net metering customers. The following outlines the major provisions of AB 920:

- The provisions in AB 920 apply to all of Banning's Electric Utility customers with solar/photovoltaic installations on their homes or businesses.
- It requires that the Utility must provide a net metering customer who has a net surplus of generation at the end of 12 months with either (a) a per kWh rate based compensation; or (b) a kWh credit to be applied against future bills. NOTE: The Utility already provides option (b) to its net metering customers.
- It requires that the Utility, by January 31, 2010, provide notice to all net metering customers of their right to receive net surplus electricity compensation, and that they must make a formal election of either (a) a per kWh rate based compensation; or (b) a kWh credit to be applied against future bills. NOTE: The Utility mailed out this notice on January 4, 2010.
- It requires that the Utility's ratemaking authority, the Banning City Council, establish a rate which is "just and reasonable" to compensate for net surplus electricity from net metering customers. This rate must be established in a public proceeding prior to January 1, 2011.
- Provides that "Upon adoption of the net surplus electricity compensation rate by the ratemaking authority, the net surplus electricity purchased by the electric utility shall count toward the electric utility's renewables portfolio standard annual procurement targets".

In determining what a "just and reasonable" rate would be for compensating applicable net metering customers, Staff evaluated what the Utility is paying for other forms of renewable energy. Staff is recommending setting the Net Metering Surplus Rate equal to the highest amount the Utility is paying for renewable energy, which is currently \$0.0784 per kWh, with an annual inflator of 1.5%. The inflator would require that the rate be increased by 1.5% each year. However, if in the future the Utility procures additional renewable energy at a higher cost, the Net Metering Surplus Rate would be adjusted to reflect that higher amount to ensure applicable net metering customers' compensation is "just and reasonable". The proposed Net Metering Surplus Electric Rate Schedule is attached herewith as Exhibit "A". If approved, Staff is recommending an effective date of June 1, 2010, with an automatic 1.5% increase to the rate to be effective on January 1<sup>st</sup> of each subsequent year beginning in 2011 through 2032, which is the year the Ormat renewable energy power purchase agreement, which the Net Metering Surplus Rate is indexed against, terminates.

The Banning City Council adopted Resolution 2007-54 on May 29, 2007, approving the Interconnection Agreement for Net Energy Metering. Staff is requesting Council approval of the revised Agreement in both the (Purchase) and (Lease) format, incorporating the updates required by AB 920. The Agreements are attached herewith as Exhibit "B" and "C" respectively, and will be used in conjunction with the proposed Net Metering Surplus Electric Rate Schedule, if approved.

**FISCAL DATA:** Minimal fiscal impact is anticipated. Because the Utility does not allow net metering customers to oversize their solar/photovoltaic systems, any surplus electricity produced should be minimal.

**RECOMMENDED BY:**



Fred Mason  
Electric Utility Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

**RESOLUTION NO. 2010-23**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
APPROVING THE NET METERING SURPLUS ELECTRIC RATE SCHEDULE AND  
THE REVISED INTERCONNECTION AGREEMENT FOR NET ENERGY METERING**

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

**WHEREAS**, Assembly Bill 920 ("AB920") was signed into law on October 11, 2009, and requires the ratemaking authority of publicly owned utilities to establish a rate which is "just and reasonable" to compensate for net surplus electricity from net metering customers; and

**WHEREAS**, it has been determined that a rate equal to the highest amount the City of Banning's Electric Utility ("Utility") is paying for other forms of renewable energy would be "just and reasonable"; and

**WHEREAS**, the Ormat Gould Geothermal renewable energy contract, at \$0.0784 per kWh with an annual inflator of 1.5%, is currently the highest priced renewable resource the Utility procures; and

**WHEREAS**, the Net Metering Surplus Electric Rate Schedule attached herewith as Exhibit "A", reflects the Ormat contract rate, including the 1.5% inflator; and

**WHEREAS**, the Banning City Council adopted Resolution 2007-54 on May 29, 2007, approving the Interconnection Agreement for Net Energy Metering; and

**WHEREAS**, the Interconnection Agreement for Net Energy Metering (Purchase) and Interconnection Agreement for Net Energy Metering (Lease) are attached herewith as Exhibit "B" and "C" respectively, and have incorporated the changes required by AB920, and will be used in conjunction with the Net Metering Surplus Electric Rate Schedule;

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

1. Adopt Resolution No. 2010-23 approving the Net Metering Surplus Electric Rate Schedule, and authorize the City Manager or his/her designee to implement said Rate Schedule effective June 1, 2010, and increase the applicable rate by 1.5% on January 1<sup>st</sup> of each subsequent year beginning in 2011 and continuing through 2032.
2. Approve the Interconnection Agreement for Net Energy Metering (Purchase) and Interconnection Agreement for Net Energy Metering (Lease), in a form approved by the City Attorney, and authorize the Electric Utility Director or his/her designee to execute said Agreement, as required, with Banning Electric Utility customers that install photovoltaic and/or wind generating systems at their homes or businesses.
3. Authorize the Mayor to execute Resolution No. 2010-23. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 25<sup>th</sup> day of May 2010.

---

Robert E. Botts, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT:

---

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

SCHEDULE NMS

NET METERING SURPLUS

APPLICABILITY

Applicable to City of Banning Electric Utility customers who have executed an Interconnection Agreement for Net Energy Metering with the Banning Electric Utility, and have made a formal election to receive compensation for any surplus electricity they generate above their own usage on an annual basis.

CHARACTER OF SERVICE

Alternating current with regulated frequency of 60 hertz single-phase, three-phase, or a combination of single and three-phase served through one meter, at a standard voltage not to exceed 240 volts, or as may be specified by the Electric Division.

TERRITORY

Within the area served by the City of Banning.

RATES

	<u>Per Meter</u> <u>Per Month</u>
Energy Credit	
All excess kWh, per kWh	\$ .0784

SPECIAL CONDITIONS

1. Customer must have a solar photovoltaic ("PV") or wind generating facility at their home or business, and have executed an Interconnection Agreement for Net Energy Metering with the Banning Electric Utility.
2. Customer must have submitted the Net Surplus Electricity Compensation for "Net Metered" Customers Election Form, indicating that they wished to receive compensation based on a per kWh rate.
3. Payments to customers made under this Rate Schedule shall be issued each January after the Utility has completed the Annual True-up, per Section 7 of the Interconnection Agreement for Net Energy Metering.
4. A special true-up shall be performed if a net metering customer closes their Banning Electric Utility account mid-year, and will be performed under the same process outlined in Section 7 of the Interconnection Agreement for Net Energy Metering.



## EXHIBIT B

GG ID # \_\_\_\_\_

### INTERCONNECTION AGREEMENT FOR NET ENERGY METERING (Purchase)

This Interconnection Agreement for Net Energy Metering (Agreement), dated \_\_\_\_\_, for purposes of identification only, is entered into by and between \_\_\_\_\_ ("CUSTOMER") an individual, and the City of Banning, a municipal corporation ("Banning" or "City"), referred to herein jointly as Parties or individually as Party.

#### 1. APPLICABILITY

This Agreement is applicable only to residential and small commercial customers operating solar or wind electrical generating facilities of 20 kilowatts or less and who satisfy all requirements of the definition of an Eligible Customer set forth in Section 2827(b) (2) of the California Public Utilities Code.

#### 2. DESCRIPTION OF CUSTOMER'S SOLAR OR WIND ELECTRIC GENERATING FACILITY

2.1 CUSTOMER has elected to interconnect and operate its solar or wind electric generating facility in parallel with the electric grid. The solar or wind electric generating facility is intended primarily to offset part or all of the CUSTOMER's own electrical requirements.

2.2 Photovoltaic/Solar (PV) Array Rating: \_\_\_\_\_

2.3 Generating Facility Location: \_\_\_\_\_  
Banning, CA 92220

2.4 The Facility shall be as shown on Customer's drawings/plans attached hereto and incorporated herein by this reference.

2.5 Date City of Banning meter was installed: \_\_\_\_\_

2.6 Renewable Energy Credits. The customer owns all the Renewable Energy Credits (REC) associated from the Renewable Energy generated from their Photovoltaic (PV) system. However, the Banning Electric Utility will not participate in any aspect of any transaction that the customer may enter into regarding said Renewable Energy Credits.

#### 3. INTERRUPTION OR REDUCTION OF DELIVERIES

3.1 Interruptions Permitted. City of Banning shall not be obligated to accept or pay for and may, without any penalty to City of Banning, require CUSTOMER to interrupt or reduce deliveries of available energy (i) when necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or part of its system, or (ii) if it determines that curtailment, interruption, or reduction is necessary because of emergencies, forced or scheduled outages, force majeure, or compliance with prudent electrical practices.

## **EXHIBIT B**

3.2 Reasonable Notice. Whenever reasonably possible and consistent with prudent electrical practices, City will give CUSTOMER reasonable notice of the possibility that interruption or reduction of deliveries may be required.

3.3 Disconnection. Notwithstanding any other provision of this Agreement, if at any time the City of Banning, in its sole discretion, determines that either (i) the Facility, or its operation, may endanger City of Banning personnel, or (ii) the continued operation of CUSTOMER's Facility may endanger the integrity of Banning's electric system, the City may disconnect CUSTOMER's Facility from Banning's system. CUSTOMER's Facility shall remain disconnected until such time as the City determines that the condition(s) referenced in (i) or (ii) of this Section 3.3 have been corrected to its satisfaction.

### **4. INTERCONNECTION**

4.1 Delivery to Meter. CUSTOMER shall deliver the available energy at the meter located on the CUSTOMER's premises. The meter shall comply with specifications set by the City of Banning.

4.2 Protective Systems. CUSTOMER shall not commence parallel operation of the Generating Facility until formal approval has been provided to it by the City of Banning's Electric Utility. The Electric Utility shall provide such approval within ten (10) working days from its final inspection or approval of the Generating Facility. Such approval shall not be unreasonably withheld.

### **5. DESIGN REQUIREMENTS**

5.1 Customer's Expenses. CUSTOMER shall be responsible for the design, installation, operation, and maintenance of the Generating Facility and shall obtain and maintain any required governmental authorizations and/or permits at CUSTOMER's sole cost and expense.

5.2 Protective Systems. CUSTOMER shall comply with the requirements for protective systems and devices set forth by the City of Banning's Electric Utility. The location of disconnecting devices shall be shown on Customer's drawings/plans.

### **6. MAINTENANCE AND PERMITS**

CUSTOMER shall (i) maintain the Facility and interconnection facilities in a safe and prudent manner and in conformance with all applicable federal, state and local laws and regulations including, but not limited to Banning's Electric Rates, Rules and Regulations, and (ii) obtain any governmental authorizations and permits required for the construction and operation of the Facility and interconnection facilities. CUSTOMER shall permit the City to inspect and shall promptly provide the City copies, at CUSTOMER's expense, of CUSTOMER's testing and maintenance records for the Facility and the interconnection facilities. CUSTOMER shall reimburse the City for any and all losses, damages, claims, penalties, or liability it incurs as a result of CUSTOMER's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of CUSTOMER's Facility.

## EXHIBIT B

### 7. BILLING

7.1 Estimated Compensation. The City will estimate the amount of electricity the CUSTOMER's Facility may produce on an annual basis, based on name plate capacity ratings, industry standard capacity factors, and actual production numbers (if available). The City will compare that estimated amount to the CUSTOMER's actual electric consumption for the past twelve months.

If the estimated amount that the CUSTOMER's Facility may generate is greater than the CUSTOMER's actual consumption for the past twelve months, the CUSTOMER will receive an energy credit for the full amount of kilowatt hours consumed during each billing period for the upcoming calendar year, except December.

If the estimated amount of electricity that the CUSTOMER's Facility may generate is less than the CUSTOMER's projected consumption for the next twelve months, the City will take the difference between the estimated kilowatt hours generated and the projected kilowatt hours of consumption and use that number of kilowatt hours (divided by twelve) as the "fixed" amount the CUSTOMER will be assessed each month. The CUSTOMER will receive a credit for the kilowatt hour difference between the total actual monthly consumption and the "fixed" amount (this amount will be prorated the first year for the actual number of months remaining in the calendar year), and the CUSTOMER will be billed this "fixed" amount each month, except December.

7.2 Reconciliation. In January of each year the City will reconcile the actual amount of electricity generated from the CUSTOMER's Facility against the amount supplied by the City during the prior calendar year. If during the year the overall amount of electricity supplied by the City is greater than the electricity generated by the CUSTOMER's Facility, the CUSTOMER will receive a bill computed in accordance with the applicable Electric Rate Schedule for the net kilowatt hours supplied by the City (less any monthly payments received from the CUSTOMER).

7.3 Customer Surplus. For CUSTOMER's who made a formal election to receive a kWh credit on the Net Surplus Electricity Compensation for "Net Metered" Customers Election Form, if during the year the overall amount supplied by the City is less than the electricity generated by the CUSTOMER's Facility, the CUSTOMER will receive a kilowatt hour credit. This credit will be used in calculating the CUSTOMER's projected consumption for the upcoming year, and will reduce the "fixed" monthly amount the customer will be assessed. If the CUSTOMER's account is closed with a net energy credit, the CUSTOMER shall not be owed any compensation by the City of Banning.

7.4 Customer Deficit. For CUSTOMER's who made a formal election to receive compensation based on a per kWh rate on the Net Surplus Electricity Compensation for "Net Metered" Customers Election Form, if during the year the overall amount supplied by the City is less than the electricity generated by the CUSTOMER's Facility, the CUSTOMER will receive a payment based on the applicable Schedule NMS Net Metering Surplus electric rate.

7.5 Public Benefit Charge. All customers will be assessed the appropriate monthly Customer Charge, Public Benefit Charge, Street Light Charge and any other applicable fees or charges. The Public Benefit Charge is assessed against the CUSTOMER's total consumption, including electricity that is generated by the CUSTOMER's Facility. Public Benefit Charges

## **EXHIBIT B**

that are not assessed during the monthly billing process will be assessed during the January "true-up" reconciliation. For a customer with a three (3) kilowatt PV system, the average Public Benefit Charge assessed at the January reconciliation will be approximately \$25. However, the amount will vary for each customer depending on the individual size of each customer's PV system, as well as the actual amount of electricity the system produces during the year.

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The City may enter CUSTOMER's premises (a) to inspect, as the City deems necessary, CUSTOMER's protective devices and to read or test meters, and (b) to disconnect, without notice, the interconnection facilities if, in Banning's opinion, a hazardous condition exists and such immediate action is necessary to protect persons, or Banning's facilities, or property of others from damage or interference caused by CUSTOMER's solar or wind electric generating facilities, or lack of properly operating protective devices.

### **9. INDEMNITY AND LIABILITY**

9.1 Indemnity and Hold Harmless: CUSTOMER ("Indemnitor") agrees to indemnify, protect, defend, and hold harmless Banning, and Banning's employees, officers, managers, agents and City Council Members ("Indemnee") from and against any claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including reasonable attorney and expert fees), judgment, civil fine and penalties, liabilities or losses of any kind or nature whatsoever whether actual, threatened or alleged, which arise out of, pertain to, or relate to, or are a consequence of, or are attributable to, or are in any manner connected with this Agreement including relating to Indemnitor's engineering, design, construction, maintenance, repair, operation, supervision, inspection, testing, protection or ownership of the indemnitor's facilities, or the making of replacements, additions, betterments to, or reconstruction of the indemnitor's facilities, but only in proportion to and to the extent such liens, claims, damages, liability or loss are caused by or result from the negligent acts, errors, or omissions of Indemnitor, its employees, officers, or agents. This indemnification provision shall apply to any acts, omissions, negligence, recklessness, or willful misconduct, whether active or passive, on the part of the Indemnitor or anyone employed or working under the Indemnitor.

9.2 Insurance Obligation. The provisions of this Section 9 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.

9.3 Survival. The provisions of this Section 11 shall be binding upon the Parties to the full extent permitted by law. The obligations set forth herein are binding on the successors, assigns and heirs of CUSTOMER and shall survive termination of this Agreement

### **10. INSURANCE**

10.1 Maintenance of Insurance. To the extent that CUSTOMER has currently in force all risk property insurance and comprehensive personal liability insurance, CUSTOMER agrees that it will maintain such insurance in force for the duration of this Agreement in no less amounts than those currently in effect. The City shall have the right to inspect or obtain a copy of the original policy or policies of insurance prior to commencing operation.

## EXHIBIT B

10.2 Insurance Endorsements. Such insurance required in Section 10.1 shall, by endorsement to the policy or policies, provide for thirty (30) calendar days written notice to the City prior to cancellation, termination, alteration, or material change of such insurance.

10.3 Changes Required by Risk Manager. Banning's Risk Manager is hereby authorized to modify the requirements set forth above in the event he/she determines that such change is in Banning's best interest.

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11.1 Governing Laws and Standards. Operation of CUSTOMER's generating facilities shall at all times comply with the applicable provisions of federal, state and local law including, without limitation, the City of Banning Municipal Code and Banning's Electric Rates, Rules and Regulations or successor provision as the same may be amended from time to time. CUSTOMER shall at all times conform to all applicable solar or wind electrical generating system safety and performance standards established by the National Electrical Code (NEC), the Institute of Electrical and Electronics Engineers (IEEE), and accredited testing laboratories such as Underwriters Laboratories, and applicable building codes.

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

11.3 Venue. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided in this Agreement shall be tried in a court of proper jurisdiction in the County of Riverside, State of California, and the Parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

11.4 Damage Limitation. Banning shall not be liable for any consequential, incidental, indirect, or special damages, whether in contract, tort, or strict liability including, but not limited to, lost profits, property damage, personal injury and loss of power, arising out of or in any way related to power outages, other electric service interruption(s), Banning's performance or nonperformance of its obligations under this Agreement or termination of this Agreement.

11.5 Attorney Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

11.6 Waivers. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

## **EXHIBIT B**

### **12. TERM AND TERMINATION OF AGREEMENT**

12.1 Effective Date. The effective date of this Agreement shall be the latest date of execution hereinafter set forth opposite the names of the signators hereto. In the event CUSTOMER fails to set forth a date of execution opposite the name(s) of CUSTOMER's signator(s), CUSTOMER hereby authorizes the City to insert the date of execution by CUSTOMER as the date said Agreement as executed by CUSTOMER is received by the City of Banning.

12.2 Termination with Notice. This Agreement may be terminated by either party with or without notice on thirty (30) days advance written notice in accordance with Section 14 hereof.

12.3 Termination Without Notice. This Agreement shall terminate, without notice, upon (i) termination of the electric distribution service provided to CUSTOMER by the City of Banning; or (ii) changes to CUSTOMER's electric load which cause CUSTOMER to no longer satisfy all requirements of the definition of an Eligible Customer-Generator set forth in Section 2827(ii) of the California Public Utilities Code.

### **13. ASSIGNMENT**

Neither party may assign this Agreement or any of its rights or duties hereunder without the prior written consent of the other party which consent shall not unreasonably withheld. Any such assignment or delegation made without such written consent shall be null or void.

### **14. REPRESENTATIVES AND NOTICES**

14.1 Form of Notice. Any notice and other communication required or permitted to be given under this Agreement shall be deemed given: (i) when hand delivered; or (ii) one (1) business day after pickup by Federal Express or similar overnight delivery service properly addressed as provided below; or (iii) three (3) business days after such notice or communication shall have been deposited with the United States Postal Service, postage prepaid and properly addressed as provided below; or (iv) when sent by facsimile transmission to the fax numbers provided below, with receipt of such fax confirmed telephonically, provided that on the same day such notice or communication shall also be hand delivered or sent by overnight delivery pursuant to this Subsection.

14.2 Addresses of Parties. Notices to Banning should be given to: Electric Utility Director, City of Banning, 99 East Ramsey Street, Banning, CA 92220; Notices to Customer shall be given to the addressee at the location shown on the execution page. CUSTOMER's notices to the City of Banning pursuant to this Section shall refer to the Generating Facility Identification Number that is set forth in Section 2.2.

14.3 Changes of Address. Either Party may change such address by giving notice to the other Party as provided herein.

14.4 Emergencies. In the event of an emergency, CUSTOMER shall immediately notify the City at its Electric Utility Department – Phone No. (951) 922-3260 of any emergency situation related to the generating facility. Notice by the City to CUSTOMER of an emergency

## EXHIBIT B

situation which affects operation of the generating facility shall be to  
\_\_\_\_\_  
(Customer Emergency Phone #)

### 15. AMENDMENTS

This Agreement contains the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous oral or written communications of the Parties. Neither Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty of the other Party outside those expressly set forth in this Agreement. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against either Party, but shall be interpreted in a manner that most accurately reflects the original intent of the Parties, and is consistent with the nature of the Parties' rights and obligations. No modification of this Agreement shall be valid or binding unless in writing duly signed by both Parties.

### 16. AUTHORITY

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

**EXHIBIT B**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF BANNING, a municipal  
corporation

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
David Aleshire, City Attorney

**CUSTOMER:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notice Representative:

Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Two signatures are required if a corporation**

**NOTE: CUSTOMER SHALL EXECUTE THIS AGREEMENT IN THE PRESENCE OF A BANNING UTILITY EMPLOYEE OR HAVE HIS/HER SIGNATURE NOTARIZED. CUSTOMER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CUSTOMER'S BUSINESS ENTITY.**

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## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

☐  
☐

INDIVIDUAL  
CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

☐

PARTNER(S)

☐

LIMITED  
GENERAL

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

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## EXHIBIT C

GG ID # \_\_\_\_\_

INTERCONNECTION AGREEMENT FOR NET ENERGY METERING  
(Lease)

This Interconnection Agreement for Net Energy Metering (Agreement), dated \_\_\_\_\_, for purposes of identification only, is entered into by and between \_\_\_\_\_ ("CUSTOMER") an individual, and the City of Banning, a municipal corporation ("Banning" or "City"), referred to herein jointly as Parties or individually as Party.

### 1. APPLICABILITY

This Agreement is applicable only to residential and small commercial customers operating solar or wind electrical generating facilities of 20 kilowatts or less and who satisfy all requirements of the definition of an Eligible Customer set forth in Section 2827(b) (2) of the California Public Utilities Code.

### 2. DESCRIPTION OF CUSTOMER'S SOLAR OR WIND ELECTRIC GENERATING FACILITY

2.1 CUSTOMER has elected to interconnect and operate its solar or wind electric generating facility in parallel with the electric grid. The solar or wind electric generating facility is intended primarily to offset part or all of the CUSTOMER's own electrical requirements.

2.2 Photovoltaic/Solar (PV) Array Rating: \_\_\_\_\_

2.3 Generating Facility Location: \_\_\_\_\_  
Banning, CA 92220

2.4 The Facility shall be as shown on Customer's drawings/plans attached hereto and incorporated herein by this reference.

2.5 Date City of Banning meter was installed: \_\_\_\_\_

2.6 Renewable Energy Credits. The customer owns all the Renewable Energy Credits (REC) associated from the Renewable Energy generated from their Photovoltaic (PV) system. However, the Banning Electric Utility will not participate in any aspect of any transaction that the customer may enter into regarding said Renewable Energy Credits.

### 3. INTERRUPTION OR REDUCTION OF DELIVERIES

3.1 Interruptions Permitted. City of Banning shall not be obligated to accept or pay for and may, without any penalty to City of Banning, require CUSTOMER to interrupt or reduce deliveries of available energy (i) when necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or part of its system, or (ii) if it determines that curtailment, interruption, or reduction is necessary because of emergencies, forced or scheduled outages, force majeure, or compliance with prudent electrical practices.

## EXHIBIT C

3.2 Reasonable Notice. Whenever reasonably possible and consistent with prudent electrical practices, City will give CUSTOMER reasonable notice of the possibility that interruption or reduction of deliveries may be required.

3.3 Disconnection. Notwithstanding any other provision of this Agreement, if at any time the City of Banning, in its sole discretion, determines that either (i) the Facility, or its operation, may endanger City of Banning personnel, or (ii) the continued operation of CUSTOMER's Facility may endanger the integrity of Banning's electric system, the City may disconnect CUSTOMER's Facility from Banning's system. CUSTOMER's Facility shall remain disconnected until such time as the City determines that the condition(s) referenced in (i) or (ii) of this Section 3.3 have been corrected to its satisfaction.

### 4. INTERCONNECTION

4.1 Delivery to Meter. CUSTOMER shall deliver the available energy at the meter located on the CUSTOMER's premises. The meter shall comply with specifications set by the City of Banning.

4.2 Protective Systems. CUSTOMER shall not commence parallel operation of the Generating Facility until formal approval has been provided to it by the City of Banning's Electric Utility. The Electric Utility shall provide such approval within ten (10) working days from its final inspection or approval of the Generating Facility. Such approval shall not be unreasonably withheld.

### 5. DESIGN REQUIREMENTS

5.1 Customer's Expenses. CUSTOMER shall be responsible for the design, installation, operation, and maintenance of the Generating Facility and shall obtain and maintain any required governmental authorizations and/or permits at CUSTOMER's sole cost and expense.

5.2 Protective Systems. CUSTOMER shall comply with the requirements for protective systems and devices set forth by the City of Banning's Electric Utility. The location of disconnecting devices shall be shown on Customer's drawings/plans.

### 6. MAINTENANCE AND PERMITS

CUSTOMER shall (i) maintain the Facility and interconnection facilities in a safe and prudent manner and in conformance with all applicable federal, state and local laws and regulations including, but not limited to Banning's Electric Rates, Rules and Regulations, and (ii) obtain any governmental authorizations and permits required for the construction and operation of the Facility and interconnection facilities. CUSTOMER shall permit the City to inspect and shall promptly provide the City copies, at CUSTOMER's expense, of CUSTOMER's testing and maintenance records for the Facility and the interconnection facilities. CUSTOMER shall reimburse the City for any and all losses, damages, claims, penalties, or liability it incurs as a result of CUSTOMER's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of CUSTOMER's Facility.

## EXHIBIT C

### 7. BILLING

7.1 Estimated Compensation. The City will estimate the amount of electricity the CUSTOMER's Facility may produce on an annual basis, based on name plate capacity ratings, industry standard capacity factors, and actual production numbers (if available). The City will compare that estimated amount to the CUSTOMER's actual electric consumption for the past twelve months.

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## EXHIBIT C

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## **EXHIBIT C**

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12.1 Effective Date. The effective date of this Agreement shall be the latest date of execution hereinafter set forth opposite the names of the signators hereto. In the event CUSTOMER fails to set forth a date of execution opposite the name(s) of CUSTOMER's signator(s), CUSTOMER hereby authorizes the City to insert the date of execution by CUSTOMER as the date said Agreement as executed by CUSTOMER is received by the City of Banning.

12.2 Termination with Notice. This Agreement may be terminated by either party with or without notice on thirty (30) days advance written notice in accordance with Section 14 hereof.

12.3 Termination Without Notice. This Agreement shall terminate, without notice, upon (i) termination of the electric distribution service provided to CUSTOMER by the City of Banning; or (ii) changes to CUSTOMER's electric load which cause CUSTOMER to no longer satisfy all requirements of the definition of an Eligible Customer-Generator set forth in Section 2827(ii) of the California Public Utilities Code.

### **13. ASSIGNMENT**

Neither party may assign this Agreement or any of its rights or duties hereunder without the prior written consent of the other party which consent shall not unreasonably withheld. Any such assignment or delegation made without such written consent shall be null or void.

### **14. REPRESENTATIVES AND NOTICES**

14.1 Form of Notice. Any notice and other communication required or permitted to be given under this Agreement shall be deemed given: (i) when hand delivered; or (ii) one (1) business day after pickup by Federal Express or similar overnight delivery service properly addressed as provided below; or (iii) three (3) business days after such notice or communication shall have been deposited with the United States Postal Service, postage prepaid and properly addressed as provided below; or (iv) when sent by facsimile transmission to the fax numbers provided below, with receipt of such fax confirmed telephonically, provided that on the same day such notice or communication shall also be hand delivered or sent by overnight delivery pursuant to this Subsection.

14.2 Addresses of Parties. Notices to Banning should be given to: Electric Utility Director, City of Banning, 99 East Ramsey Street, Banning, CA 92220; Notices to Customer shall be given to the addressee at the location shown on the execution page. CUSTOMER's notices to the City of Banning pursuant to this Section shall refer to the Generating Facility Identification Number that is set forth in Section 2.2.

14.3 Changes of Address. Either Party may change such address by giving notice to the other Party as provided herein.

14.4 Emergencies. In the event of an emergency, CUSTOMER shall immediately notify the City at its Electric Utility Department – Phone No. (951) 922-3260 of any emergency situation related to the generating facility. Notice by the City to CUSTOMER of an emergency

## EXHIBIT C

situation which affects operation of the generating facility shall be to \_\_\_\_\_.  
(Customer Emergency Phone #)

### 15. AMENDMENTS

This Agreement contains the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous oral or written communications of the Parties. Neither Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty of the other Party outside those expressly set forth in this Agreement. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against either Party, but shall be interpreted in a manner that most accurately reflects the original intent of the Parties, and is consistent with the nature of the Parties' rights and obligations. No modification of this Agreement shall be valid or binding unless in writing duly signed by both Parties.

### 16. LEASE PROVISIONS

16.1 Leased Equipment. CUSTOMER has leased the Photovoltaic /Solar (PV) equipment from the following company (lessor):

Authorized Lessor Representative:

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Phone #: \_\_\_\_\_

A copy of the applicable lease agreement between the CUSTOMER and lessor \_\_\_\_\_ are attached as Exhibit A.

16.2 Early Removal of Equipment. If the leased PV equipment is removed, all or in part, for any reason prior to the end of the 10th year of the lease term, a pro-rated portion of the Utility rebate shall be refunded to the Banning Electric Utility by the lessor within 30 days of the equipment removal. A table setting out the 10 year pro-ration schedule will be provided to the customer and lessor at the time the rebate is issued. Said table will be included in this agreement as Exhibit B.

Authorized Lessor Representative:

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Phone #: \_\_\_\_\_

### 17. AUTHORITY

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



## **EXHIBIT C**

violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**EXHIBIT C**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF BANNING, a municipal  
corporation

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
David Aleshire, City Attorney

**CUSTOMER:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notice Representative:

Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Two signatures are required if a corporation

**NOTE: CUSTOMER SHALL EXECUTE THIS AGREEMENT IN THE PRESENCE OF A BANNING UTILITY EMPLOYEE OR HAVE HIS/HER SIGNATURE NOTARIZED. CUSTOMER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CUSTOMER 'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

☐  
☐

INDIVIDUAL  
CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

☐

PARTNER(S) ☐ LIMITED  
☐ GENERAL

\_\_\_\_\_  
NUMBER OF PAGES

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER \_\_\_\_\_

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

\_\_\_\_\_  
\_\_\_\_\_

**CITY COUNCIL AGENDA  
STAFF REPORT**

**DATE:** May 25, 2010

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Andy Takata, City Manager

**SUBJECT:** City Council Adoption of Resolution No. 2010-37, In Accordance with Banning Municipal Code City Council Chapter 2.04, Section 2.04.010, Setting Its City Council Meeting Time and Adoption of Resolution No. 2010-38 Establishing Time Limits For Conduct of Business At City Council Meetings And Repealing Resolution No. 1977-33.

**RECOMMENDATION:** That the City Council adopt Resolution No. 2010-37, in accordance with Banning Municipal Code City Council Chapter 2.04, Section 2.04.010, setting its meeting time. Furthermore, the Council Adopt Resolution No. 2010-38, Establishing Time Limits for Conduct of Business at City Council Meeting and Repealing Resolution No. 1997-33.

**Chapter 2.04, Section: 2.04.010, City Council Meetings - Time.**

“The City Council shall hold its regular meetings on the second and fourth Tuesdays of each month at 5:00 p.m. Except for the months of July, August, November and December. During the months of July and August the City Council shall meet on the fourth Tuesday of each month at the approximate hour of 5:00 p.m. For the months of November and December the City Council shall meet on the second Tuesday of each month at the approximate hour of 5:00 p.m. If any regular Council meeting falls on a City holiday, such meeting shall be held on the first day thereafter, which is not a City holiday. Closed Session will occur at 4:00 p.m. prior to all regularly scheduled meetings, when applicable.”

**BACKGROUND:** Staff has recommended this change to improve efficiency and wait time in between meetings.

The City Council may choose to modify staff recommended language regarding its meeting schedule.

**FISCAL DATA:** There is no anticipated fiscal impact to the City.

RECOMMENDED AND APPROVED BY:



Andy Takata  
City Manager

**CITY COUNCIL RESOLUTION NO. 2010-37**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADDRESSING MUNICIPAL CODE CHAPTER 2.04, SECTION 2.04.010, SETTING ITS CITY COUNCIL MEETING TIME.**

**WHEREAS**, the City Council wishes to change its regular meeting time; and

**WHEREAS**, the City Council as per Banning Municipal Code Chapter 2.04, Section 2.04.010 is authorized to formalize its meeting schedule by resolution and adopts the following;

**Regular Meetings.**

“The City Council shall hold its regular meetings on the second and fourth Tuesdays of each month at the approximate hour of 5:00 p.m. except for the months of July, August, November and December. During the months of July and August the City Council shall meet on the fourth Tuesday of each month at the approximate hour of 5:00 p.m. For the months of November and December the City Council shall meet on the second Tuesday of each month at the approximate hour of 5:00 p.m. If any regular Council meeting falls on a City holiday, such meeting shall be held on the first day thereafter, which is not a City holiday. Closed Session will occur at 4:00 p.m. prior to all regularly scheduled meetings, when applicable.”

**NOW, THEREFORE**, the City Council of the City of Banning resolves that the meeting schedule herein shall take effect on June 8, 2010.

**PASSED, APPROVED AND ADOPTED** this 25<sup>th</sup> day of May, 2010.

\_\_\_\_\_  
Robert E. Botts, Mayor

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

\_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

9/6

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing City Council Resolution 2010-37 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 25<sup>th</sup> day of May, 2010, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

**RESOLUTION NO. 2010-38**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ESTABLISHING TIME LIMITS FOR CONDUCT OF BUSINESS AT CITY COUNCIL MEETINGS AND REPEALING RESOLUTION NO. 1997-33.**

**WHEREAS**, the large number of matters on recent Council agendas and the complexity of such matters have led to several lengthy meetings lasting until very late hours; and

**WHEREAS**, this Council wishes to be able to give careful attention to and make wise decisions on matters coming before it both of which goals may not be met after fatigue sets in caused by several hours of active participation in important City business; and

**WHEREAS**, a reasonable limit upon the length of Council meetings appear for these reasons to be in the best interest of both the citizens and the City Council Members of the City of Banning.

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

**Section I.** That commencing with the first regularly scheduled Council meeting following the effective date of this resolution, a 9:00 p.m. curfew shall be imposed upon City Council meetings. Matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voted upon and for only up to an hour and then another vote will need to be taken to continue the meeting for another hour.

**Section II.** The City Manager is requested to arrange the regular order of business on Council agendas to minimize any adverse effects this policy may have with respect to the timely conduct of important City business.

**Section III.** That Resolution No. 1997-33 is hereby Repealed.

**Section IV.** A copy of this resolution shall be posted in a conspicuous location and appropriate references hereto shall be made on the Council agenda in order to provide adequate notice.

**PASSED, ADOPTED AND APPROVED** this 25<sup>th</sup> day of May, 2010.

\_\_\_\_\_  
Robert E. Botts, Mayor

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

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

\_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-38, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 25<sup>th</sup> day of May, 2010.

AYES:

NOES:

ABSTAIN:

ABSENT:

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



**RESOLUTION NO. 1997-33**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
ESTABLISHING TIME LIMITS FOR CONDUCT OF BUSINESS AT COUNCIL  
MEETINGS**

**WHEREAS**, the large number of matters on recent Council agendas and the complexity of such matters have led to several lengthy meetings lasting until very late hours; and

**WHEREAS**, this Council wishes to be able to give careful attention to and make wise decisions on matters coming before it both of which goals may not be met after fatigue sets in caused by several hours of active participation in important City business; and

**WHEREAS**, a reasonable limit upon the length of Council meetings appear for these reasons to be in the best interests of both the citizens and the City Councilmembers of the City of Banning.

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

**Section 1.**

That commencing with the first regularly scheduled council meeting following the effective date of this resolution, an 10:00 p.m. curfew shall be imposed upon City Council meetings. 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 councilmembers present and voting.

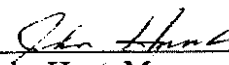
**Section 2.**

The City Manager is requested to arrange the regular order of business on Council agendas to minimize any adverse effects this policy may have with respect to the timely conduct of important city business.

**Section 3.**

A copy of this resolution shall be posted in a conspicuous location and appropriate references hereto shall be made on the Council agenda in order to provide adequate notice.

**PASSED, APPROVED, AND ADOPTED** this 8th day of April, 1997.

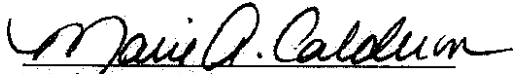
  
\_\_\_\_\_  
John Hunt, Mayor  
City of Banning, California

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



John F. Wilson,  
City Attorney

**ATTEST:**

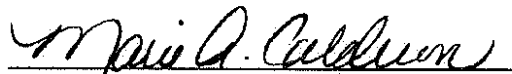


Marie A. Calderon,  
City Clerk

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 1997-33, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of April, 1997, by the following vote, to wit:

AYES: Councilmembers Jenkins, Lucsko, Palmer, Mayor Hunt  
NOES: None  
ABSENT: Councilmember Williams  
ABSTAIN: None



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