

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

October 23, 1012
5:00 p.m.

Banning Civic Center
Council Chambers

The following information comprises the agenda for a regular meeting of the City Council and a joint meeting of the City Council and the Banning Utility Authority.

Per City Council Resolution No. 2010-38 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 voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

I. CALL TO ORDER

- Invocation – Pastor Elder Preston, Praise Tabernacle Apostolic Church
- Pledge of Allegiance
- Roll Call – Council Members Botts, Franklin, Hanna, Machisic, Mayor Robinson

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

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 the category may be received and filed or referred to staff for future research or a future agenda.

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.

PRESENTATIONS:

1. Banning Stagecoach Days Committee Presentations (*ORAL*)
2. Life Saving Awards to Office Babcock and Office Bennett (*ORAL*)

IV. CONSENT ITEMS

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

Motion: That the City Council approve Consent Item 1 through 9

Items to be pulled _____, _____, _____, _____ for discussion.

(Resolutions require a recorded majority vote of the total membership of the City Council)

1.	Approval of Minutes – Special Meeting – 10/09/12 (Closed Session)	1
2.	Approval of Minutes – Regular Meeting – 10/09/12	2
3.	Approval of Minutes – Special Meeting – 10/16/12 (Closed Session)	9
4.	Resolution No. 2012-67, Authorizing the City to Access State and Federal Level Summary Criminal History Information through the California Department of Justice and Establishing a Criminal Background and Livescan Policy.	10
5.	Resolution No. 2012-74, Approving the Amendment to the Jt. Powers Agreement of the Western Riverside Council of Governments to Permit the Provision of Pace Services Statewide	23
6.	Resolution No. 2012-79, Approving the Updated Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement	37
7.	Resolution No. 2012-81, Approving Payment for Reimbursement of Asphalt Repairs to the Sun Lakes Country Club	61
8.	Resolution No. 2012-82, Approving a Professional Services Agreement to Western Riverside Council of Governments for Residential and Commercial Diversion Services	66
9.	Resolution No. 2012-83, Approving and Adopting a Manual of Policies and Procedures for the Conduct of Meetings by City Legislative Bodies	70

- Open for Public Comments
- Make Motion

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

V. CONSENT ITEMS

1. Resolution No. 2012-12 UA, Awarding the Construction Contract for Project No. 2010-05R, Irrigation Water Line – Segment A and Rejecting all Other Bids and Approving Related Professional Services Agreements and Purchases 112

Adjourn Joint Meeting reconvene the regular City Council Meeting.

VI. ORDINANCES-INTRODUCTION

1. Ordinance No. 1457 and Urgency Ordinance No. 1458, Setting forth a procedure for the rotation of the office of mayor and other positions held by council members. Proposed Ordinances are presented in both standard and urgency form to ensure it is in effect for mayoral appointment this year 123

Recommendations: 1) Waive further reading and adopt Ordinance No. 1457; and 2) Waive further reading and adopt, *by fourth-fifths vote*, Urgency Ordinance No. 1458.

Mayor asks the City Clerk to read the title of Ordinance No. 1457:

“An Ordinance of the City Council of the City of Banning, California, Amending Ordinance No. 1442, Setting Forth a Procedure for the Rotation of the Office of Mayor and Other Positions Held by Council Members.

Motion: I move to waive further reading of Ordinance No. 1457.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1457 pass its first reading.

Mayor asks the City Clerk to read the title of Ordinance No. 1458:

“An Urgency Ordinance of the City Council of the City of Banning, California, Amending Ordinance No. 1442, Setting Forth a Procedure for the Rotation of the Office of Mayor and Other Positions Held by Council Members.

Motion: I move to waive further reading of Ordinance No. 1458.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1458 be adopted.

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

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

VIII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Polices & Procedures (fingerprinting) for Applicant re. Projects and Applicants for Commissions & Committees (*Commissions & Committees*)

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 (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

10/09/2012
JOINT MEETING

A special meeting of the Banning City Council was called to order by Mayor Robinson on October 9, 2012 at 4:03 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT:

Councilmember Botts (arriv. 4:04 p.m.)
Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Mayor Robinson

COUNCIL MEMBERS ABSENT:

None

OTHERS PRESENT:

June Overholt, Administrative Svcs. Dir./Deputy City Manager
Marie A. Calderon, City Clerk

CLOSED SESSION

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

City Council convened in closed session pursuant to the provisions of Government Code Section 54957 regarding City Manager evaluation.

Meeting reconvened to regular session at 5:05 p.m. with no reportable action taken.

ADJOURNMENT

By common consent the meeting adjourned at 5:05 p.m.

Marie A. Calderon, City Clerk

/

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

10/09/12
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the City Council Sitting in Its Capacity of Successor Agency and the Banning Housing Authority was called to order by Mayor Robinson on October 9, 2012 at 5:10 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT:

Councilmember Botts
Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Mayor Robinson

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: June Overholt, Administrative Services Dir./Deputy City Manager
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Leonard Purvis, Police Chief
Heidi Meraz, Community Services Director
Bill Manis, Economic Development Director
Marie A. Calderon, City Clerk

The invocation was given by Councilmember Bob Botts. Councilmember Machisic invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

Mayor Robinson said that the Council met in closed session in regards to the City Manager's evaluation. There was no reportable action.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Fred Sakurai resident of Banning commented on the low attendance at the candidate's forum recently held in the council chambers; 20 to 30 people. He doesn't know if this was due to the dull format, dull questions, or the dull answers. Residents of Banning always complain that those Sun Lakes always think that they own the world; control the city. Sun Lakes had a candidate's forum last night and there was approximately 200 people in attendance and the format was semi dull, the questions were semi dull, the replies were a little bit more lively but the main thing here is that there were about 200 people as opposed to the small amount that was

in attendance at the candidate's forum in the council chambers. Unless the residents, non-Sun Lakers, get off their back side and get out in vote and participate in the election process, Sun Lakers are going to rule the city.

Dorothy McLean of Banning stated that Pass Area Support Soldiers (PASS) are starting their donation drive for the holiday and have donation boxes at city hall, Banning Community Center and Senior Center, the Farmhouse and at the Chatiney Center in Beaumont. They will do packing on Nov. 14th at the Beaumont Community Center. If you have a member of your family serving overseas, PASS would like to send them a box this holiday season and you can give those names to Debbie Franklin at Banning City Hall or at P. O. Box 47.

Chelse Youngblood and Vicki Hernandez, public safety dispatchers from the Banning Police Department addressed the Council inviting them and the public to attend the a fundraiser that they are having this Saturday, Oct. 13th for BPAL (Banning Police Activities League) from 11 a.m. to 4 p.m. at Nicolet Middle School gymnasium parking lot. This is a "Beautiful Ladies Boutique" and about 45 vendors will be in attendance selling various items and the space rental, as well as, the raffle proceeds will benefit this year's Shop with a Hero Program. There will also be many things for the children to do.

CORRESPONDENCE: There was none.

CONSENT ITEMS

Mayor Robinson said that there was an addendum to add Nos. 11 and 12 to the Consent Items for approval. He pulled Consent Item No. 6 for discussion.

1. Approval of Minutes – Regular Meeting – 07/24/12

Recommendation: That the minutes of the regular meeting of July 24, 2012 be approved.

2. Approval of Minutes – Special Meeting – 09/25/12 (Closed Session)

Recommendation: That the minutes of the special meeting of September 25, 2012 be approved.

3. Resolution No. 2012-75, Amending the Classification Plan for the City of Banning

Recommendation: That the Council adopt Resolution No. 2012-75, approving the job description of Executive Assistant under the classification and compensation plan, the amendments to the authorized position control per the FY 13 budget and the Administrative Services Director make necessary budget adjustments.

4. Resolution No. 2012-76, Approving the 1st Amendment to the Cooperative Agreement, Authorizing Riverside County to Act as Lead Agency to Provide Roadway and Bridge Improvements on Sunset Avenue Grade Separation Project.

Recommendation: That the Council adopt Resolution No. 2012-76.

5. Resolution No. 2012-77, Accepting Project No. 2012-01, UST and Hydraulic Lift Removal at 150, 220 and 280 East Ramsey Street as Complete.

Recommendation: That the Council adopt Resolution No. 2012-77, and direct the City Clerk to record the Notice of Completion and approving the expenditure of the 15% contingency added to the prior project, as well as, an additional expenditure in the amount of \$6,138.80.

7. Resolution No. 2012-80, Authorizing the Submittal of an Application, Acceptance of an Allocation of Funds and Execution of a Grant Agreement with the California Department of Transportation (DOT) for an Airport Improvement Program (AIP) Matching Grant.

Recommendation: That the Council adopt Resolution No. 2012-80 and that the City Manager is authorized to execute any documents required to apply for and accept these subject funds on behalf of the City of Banning and the Administrative Services Director is authorized to make the necessary budget adjustments to record the grant received into the Airport Fund.

8. Report of Investments for July 2012

Recommendation: That the Council receive and place these required monthly Reports of Investments on file.

9. Report of Investments for August 2012

Recommendation: That the Council receive and place these required monthly Reports of Investments on file.

10. Approval of Accounts Payable and Payroll Warrants for Month of August 2012

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

11. Ordinance No. 1454 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Amending Chapter 8.44 of the Banning Municipal Code Relative to Noise Exemption

Recommendation: That Ordinance No. 1454 pass its second reading and be approved.

12. Ordinance No. 1455 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Amending Chapter 8.48 (Nuisances) of the Banning Municipal Code Regarding a Time Frame for Providing Reasonable Notice for Violations of Municipal and Zoning Codes.

Recommendation: That Ordinance No. 1455 pass its second reading and be approved.

Hanna/Machisic to approve Consent Items 1 through 5 and 7 through 12. Mayor Robinson opened the item for public comments. There were none. **Motion carried, all in favor.**

6. Resolution No. 2012-78, Awarding a Professional Services Agreement to Mission Geographic for the Collection and Input of Pavement Management Data for an amount not to exceed \$91,870.00.

Mayor Robinson said his concern was that it showed funding of \$91,870 with \$40,000 dollars missing out of the report and he would like to know where that is coming from and are these two pots of money equal the \$91,870.00.

Director Burk gave a brief power-point presentation in regards to this item. In regards to the funding sources currently in the budget there is money set aside in the Measure "A" Gas Tax money. The \$51,870.00 is Assembly Bill 300 which we have currently in the books that was a funding mechanism related to pavement management so staff is asking the Council to appropriate that money \$1,870.00 from SB 300 which gives the total cost of the \$91,870.00 and more importantly there are no General Fund money required for this project.

There was further Council and staff discussion regarding some of these funds being limited in their scope of use and signs that are now in really bad shape and do we have to wait to make changes.

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

Motion Machisic/Franklin that Consent Item No. 6 be approved adopting Resolution No. 2012-78, and authorizing the Administrative Services Director to make the necessary budget adjustments and appropriations in the amount of \$51,870.00 from the SB 300 Fund to Account No. 101-4900-431.33-53 and authorize the City Manager to execute the Professional Services Agreement with Mission Geographic of Phoenix, Arizona. Motion carried, all in favor.

JOINT MEETING

Mayor Robinson recessed the regular Council Meeting and called to order a joint meeting of the Banning City Council Sitting in Its Capacity of Successor Agency and the Banning Housing Authority.

CONSENT ITEMS

Mayor Robinson pulled this item for discussion

1. Due Diligence Review for the Low and Moderate Income Housing Fund

Director Manis gave the staff report on this item as contained in the agenda packet. He stated that this item is to keep you updated essentially on what is happening in regards to the requirements that relate to AB 1484 that was adopted by the State of California on June 27, 2012. The Successor Agency is required to employ a licensed accountant, approved by the

County of Riverside Auditor-Controller, to conduct a Due Diligence Review (DDR) to determine the unobligated balances available for transfer to taxing entities and this is in relationship to our low and moderate income housing fund. Director Manis further explained the process in regards to the DDR review.

There was some Council and staff discussion regarding the remainder of monies in the low/mod housing.

Mayor Robinson opened the item for public comments.

Inge Schuler expressed her concern because as she looked through the report she found repeated references to the meeting to be held on Oct. 15th but there is no mention of a time and place where people can come and give public comment on this Due Diligence Review.

Director Manis said that the public comment session will take place on Monday, Oct. 15th in the Large Conference Room at city hall at 9:30 a.m. A full report is posted on the City's web site that people can access.

Motion Franklin/Machisic to receive and file the Low and Moderate Income Housing Fund Due Diligence Review.

Councilmember Botts commented on his frustration, maybe everyone's frustrations, with what the State is continuing to do to just disassemble cities. He feels it is important that the property taxpayers in the city of Banning know that this is their money that they paid into this account into redevelopment for low and moderate income housing and we have done a lot of good things over time with that but this is the taxpayer's money that Governor Jerry Brown eliminated redevelopment and the liberal legislators and the governor are saying we are taking that money. He felt that it is important that the taxpayers know that this is the State literally taking their local tax money.

Motion carried, all in favor.

Mayor Robinson adjourned the joint meeting and reconvened the regular City Council Meeting.

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

City Council

Councilmember Franklin –

- She said that Transportation NOW meets monthly to talk about transportation for the Pass Area and one of the things that they have been working on for several months has been how to extend coverage in the evenings. She is happy to say that they have worked out with the transit department extending coverage until approximately 10 o'clock at night so if a person gets off at 8 p.m., they are going to be able to catch a bus in the evening from the Outlet Stores and the Morongo area and come back into town via Route 1 and this will start Nov. 1st. There will also be Saturday and Sunday service.

- On Monday, Oct. 8th she attended a water meeting for the San Gorgonio Pass Water Agency and the hydrologist for the United States Geological Survey group gave a very intense two and a half hour presentation in regards to what is going on in our area showing the fault lines, showing where water is located and how water has been used here for the last 100 years. There was also a trend analysis and he talked about the Banning Basin, in particular, and said it was very complicated and he hasn't finished his work on that yet. He also spoke about the Cabazon Basin and how there is a way to capture the water there but it moves very quickly.

- Mayor Robinson –

- There will be a Fire Memories Pancake Breakfast on Saturday, Oct. 13th at 7 to 11 a.m.
- Oct. 16th the State of the City Address will be given and it will be held in the City Council Chambers starting at 11:30 a.m. Also, you can contact Daniele Savard at City Hall if you want to attend the luncheon at the Dorothy Ramon Learning Center.

Councilmember Botts –

- In regards to the Sunset Grade Separation he believes there was some discussion at the last Council meeting about losing some earmarked money and there was another article just recently about the 10 or 12 grade separations which we must get going (cities and the Transportation Commission throughout Riverside County) and working on behalf of the Council at RCTC (Riverside County Transportation Commission). Our staff and this Council and previous Council's have worked to get this going and he is confident that we will see a groundbreaking early in 2013; perhaps the first quarter. It is critical for the development that will take place on the south side of the freeway in regards to retail and housing and the extension of Sun Lakes Boulevard through to Sunset on a temporary basis to help with that construction and be open for transportation.

City Committee Reports - None

Report by City Attorney - None

Report by City Manager

- June Overholt, Administrative Services Director/Deputy City Manager wanted to make the community aware that their utility bill format has changed and there is already a group of residents that have received the new format and if there are any questions or concerns in regards to this new format, make sure you let the City know. Staff has worked hard on this process and very excited about the new form in trying to make sure that it provides as much information as possible to make it user-friendly.

ITEMS FOR FUTURE AGENDAS

New Items – None

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Polices & Procedures (fingerprinting) for Applicant re. Projects and Applicants for Commissions & Committees (*Commissions & Committees*)

ADJOURNMENT

By common consent the meeting adjourned at 5:44 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT 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.

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

10/16/2012
JOINT MEETING

A special meeting of the Banning City Council was called to order by Mayor Robinson on October 16, 2012 at 3:02 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager
Marie A. Calderon, City Clerk

CLOSED SESSION

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

City Council convened in closed session pursuant to the provisions of Government Code Section 54957 regarding City Manager evaluation.

Meeting reconvened to regular session at 4:40 p.m. with no reportable action taken.

ADJOURNMENT

By common consent the meeting adjourned at 4:40 p.m.

Marie A. Calderon, City Clerk

**CITY COUNCIL MEETING
REPORT OF OFFICERS**

DATE: **October 15, 2012**

TO: **Mayor and City Council**

FROM: **Andrew J. Takata, City Manager**
June Overholt, Administrative Services Director/Deputy City Manager

SUBJECT: **Resolution No. 2012-67 adopting a Criminal Background and Live Scan policy**

RECOMMENDATION: That the City Council adopt Resolution No. 2012-67 authorizing the City to access State and Federal level summary criminal history information through the California Department of Justice for employment and volunteer purposes and establishing a city criminal background check and live Scan policy.

BACKGROUND: The adoption of this resolution will: 1) provide the City with a comprehensive criminal background check policy (which will also provide the City with guidelines for conducting background checks on members of boards, commissions and committees) and 2) provide the California Department of Justice (DOJ) with City Council's authorization to access federal criminal background records in addition to state and local criminal background records.

The City currently does not have a comprehensive policy regarding the use of background checks for employment purposes. The proposed resolution would adopt such a policy for the City. The policy also provides that background checks will be conducted on volunteers and also on prospective members of boards, committees and commissions, and provides guidelines for these background checks. Adopting such a policy will help ensure that the City complies with DOJ Criminal Offender Record Information security requirements.

The resolution presently before Council also specifically authorizes the City to access federal level summary criminal history information in addition to state and local criminal history information for employees (including applicants of City boards, commissions and committees) and volunteers. While the law does not require federal background checks on employees, it is recommended that the City adopt this resolution as a matter of due diligence since the law allows for federal background checks on employees and volunteers.

DISCUSSION:

A. The City is Authorized by Law To Perform Background Checks for Job Applicants

The City is permitted to inquire into a job applicant's criminal records by use of criminal history record searches. An applicant's criminal history can be used as a basis for denying employment so long as the conviction is related to the job and future job performance. See *Avant v. South*

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Central Bell Tel. Co. (5th Cir. 1983) 716 F2d 1083; *Green v. Missouri Pac. R.R. Co.* (8th Cir. 1975) 523 Fed 1290.

The City cannot hire a person or volunteer to perform services at a park, playground, and recreational center in a position having supervisory or disciplinary authority over a minor, if that person has been convicted of various offenses specified in Pub. Res. Code § 5164. A city must require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any of the offenses specified in this section. Under Penal Code section 11105.3, the city must screen such prospective employee or volunteer for that person's criminal background. (Pub. Res. Code § 5164.)

B. Adopting the Attached Resolution Will Provide the City Authorization to Conduct Federal Background Checks in Addition to State Background Checks.

In 1987, the City enacted a resolution to authorize access to "state and local summary criminal history information" from the DOJ for employment, licensing, or certification purposes. (City of Banning Resolution No. 1987-62.) Resolution No. 1987-62 does not authorize the City to access for employment purposes federal level summary criminal history information from the Federal Bureau of Investigation (FBI).

Federal background checks are recommended for certain employees and volunteers assigned to positions having supervisory or disciplinary authority over minors and for situations in which an individual has a disqualifying criminal record in a state other than California. Currently, for some employment positions, the City conducts federal background checks by having applicants submit fingerprints to the Police Department, which then uses its own background check procedures and provides the results to the City's Human Resources department. Receiving the results from a background check on an applicant through this process can take up to several weeks.

Because the City is already conducting federal criminal history information checks for some employment positions, we recommend that City Council authorize the City to obtain this federal criminal history information directly from the DOJ. The City will then be able to use the same process for conducting both State and Federal criminal background checks. This process consists of submitting fingerprints to the DOJ via Live Scan, an electronic fingerprint scanning and submission process. (For federal background checks, the DOJ then transmits the fingerprints to the FBI.) Authorizing the City to obtain federal criminal history information directly from the DOJ would streamline the federal background check process for the City and potentially speed up the process for receiving the results of federal background checks.

C. Adopting a Background Check and Live Scan Policy Will Provide the City with Guidelines for Conducting Employee Background Checks (Including Background Checks on Prospective Members of Boards, Commissions, and Committees) and Help Ensure Compliance with DOJ Criminal Offender Record Information Security Requirements.

The City's Administrative Policy for hiring procedures (AP-10) provides that the City is to conduct a background check and confirmation for technical and academic credentials. However, AP-10 does not contain specific procedures or policies for conducting these background checks.

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Additionally, the policy does not provide any policies or procedures for conducting criminal background checks on prospective members of boards, commissions, and committees.

The proposed policy, attached as Exhibit "A", would provide specific policies for conducting criminal background checks on all employees, including prospective members of boards, commissions, and committees. Generally, the same Department of Justice procedural requirements that apply to background checks of employees will apply to background checks of prospective councilmembers and commissioners. The policy would provide for specific grounds for disqualification/ termination for employment with the City. Finally, the policy contains the DOJ criminal offender record information security requirements, which the City must follow as a condition of receiving criminal history information from the DOJ.

FISCAL DATA:

Funding has been included in the budget for background checks.

Prepared by:

Aleshire & Wynder, LLP

REVIEWED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

Attachment:

1. Resolution No. 2012-67

12

RESOLUTION NO. 2012-67

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING THE CITY TO ACCESS STATE AND FEDERAL LEVEL
SUMMARY CRIMINAL HISTORY INFORMATION THROUGH THE CALIFORNIA
DEPARTMENT OF JUSTICE AND ESTABLISHING A CRIMINAL BACKGROUND
AND LIVESCAN POLICY**

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts and joint powers authorities to access state and local summary criminal history information for employment, licensing or certification purposes; and

WHEREAS, Penal Code Section 11105(b)(11) authorizes cities, counties, districts and joint powers authorities to access federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city council, board of supervisors, governing body of a city, county or district or joint powers authority to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Banning hereby finds, orders and resolves as follows:

SECTION 1. That the City of Banning is hereby authorized to access state and federal level summary criminal history information for employment (including volunteers and prospective members of boards, commissions and committees), licensing , or certification for purposes and may not disseminate the information to a private entity.

SECTION 2. That the City Council hereby adopts as the attached the Policy attached hereto as Exhibit "A", and incorporated herein by this reference, as if fully set forth, entitled "Criminal Background and Live Scan Policy".

SECTION 3. This Resolution supersedes all prior resolutions or other Council actions or policies requiring criminal history checks for City of Banning employees and volunteers.

SECTION 4. This policy will take effect immediately upon adoption.

SECTION 5. The City Clerk shall certify to the passage and adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 23rd day of October, 2012.

Don Robinson, Mayor
City of Banning, California

ATTEST:

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

**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. 2012- 67 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23rd day of October, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

<h1 style="text-align: center;">City of Banning</h1> <h2 style="text-align: center;">Hiring Procedures - supplemental</h2>		SECTION or Policy No: AP. 10 – Supplemental ORIGINATING DEPARTMENT: Administrative Services Department/HR Reference: Administrative Policy
SUPERSEDES: none	NEW EFFECTIVE DATE: October 23, 2012	PAGE 1 of 7
APPROVED BY CITY COUNCIL: City Council Resolution 2012-67		

CRIMINAL BACKGROUND AND LIVE SCAN POLICY

Purpose

To establish a policy to ensure that the City of Banning, its employees and volunteers, and members of the public are protected and to help minimize potential liability, the City Council has authorized a resolution authorizing the City to obtain federal and state summary criminal background information from the Department of Justice for employment purposes. The City desires to identify those employees, prospective employees and volunteers who have a criminal history so that such information may be used in employment decisions. This policy is also designed to ensure that the City complies with DOJ confidentiality regulations pertaining to criminal history information.

POLICY:

1. Authority

Under federal and state law, public agencies may enact policies that disqualify applicants with certain criminal convictions from employment positions if the conviction is relevant to the position in question. Furthermore, California Penal Code Section 11105(b)(11) permits cities to obtain state and federal summary criminal background information from the Department of Justice if the City Council has authorized such access and if the criminal background information is required to implement a statute, ordinance or regulation that contains requirements or exclusions based on specified criminal conduct. The City Council authorized the City to access such information pursuant to Resolution Number 2012-67.

2. General

The City shall not consider for employment a person or volunteer who has been convicted of a felony or a misdemeanor involving a crime listed in Section 4 of this policy. Such conviction shall be cause for termination of any employee or volunteer, if the felony or misdemeanor is for a crime specified below, or, if the crime is not actually listed, the City determines that the crime is substantially similar in nature to those specified below.

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The conviction may be disregarded if it is found and determined by the appointing authority that mitigating circumstances exist, such as, but not limited to, evidence of rehabilitation, length of time elapsed since such conviction, the age of such person at the time of conviction, or the fact that the classification applied for is unrelated to such conviction, and federal or state law does not require such disqualification or termination.

3. Criminal Record Background Checks; Special Procedures for Prospective Members of Boards, Commissions, and Committees

- a) The City shall obtain criminal background information pursuant to the procedures set forth below on all prospective employees and volunteers, all prospective members of boards, commissions and committees, all current employees and volunteers who work with or supervise minors, and all employees formally considered for promotion.
- b) For background checks on prospective members of boards, commissions and committees, the following policies shall apply:
 - New members shall obtain a criminal history check within 30 days of application to the commission, board or committee, or before the Council meeting date which the appointment is made. A criminal background check shall be required only for a prospective member being considered for appointment. Such appointment shall be contingent upon the prospective member successfully passing the criminal background check.

The City Manager or his or her designee will notify the members of the results.

4. Specific Convictions and Positions

- a) With respect to all prospective employees, current employees and volunteers, a conviction of any of the following Penal Code sections, shall be grounds for disqualification or termination. In the event that the numbering of the Penal Code sections cited below is changed, this policy shall apply to the successor statute of the Penal Code section cited below.

Section 68: Asking for or receiving bribes

<h1 style="margin: 0;">City of Banning</h1> <h2 style="margin: 0;">Hiring Procedures - supplemental</h2>		SECTION or Policy No: AP. 10 – Supplemental
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Section 72: Presentation of fraudulent claims
 Section 73, 74: Bribes for appointment to office
 Section 187, 189: Murder
 Section 209: Kidnapping for ransom, extortion or robbery
 Section 211: Robbery - taking personal property in possession of someone by force or fear
 Section 245: Assault with a deadly weapon
 Section 261: Rape
 Section 451: Burglary
 Section 484: Theft
 Section 490.5: Shoplifting
 Section 503: Embezzlement - fraudulent appropriation of property by a person to whom it has been entrusted
 Section 518: Extortion - obtaining property by a wrongful use of force or fear or under a color of official right

b) With respect to all applicants for and current employees and volunteers in positions that work with or supervise minors, in addition to above, a conviction of any of the following code sections shall be grounds for disqualification or termination:

- 1) Violations or attempted violations of Penal Code Sections 220, 261.5, 262, 273a, 273d, or 273.5, 288, or any sex offense listed in Section 290.
- 2) Any crime described in the California Uniform Controlled Substances Act (Division 10 [commencing with Section 11000] of the California Health and Safety Code).
- 3) Any felony or misdemeanor conviction within 10 years of the City's request for background information for a violation or attempted violation of Chapter 3 of Title 8 of the Penal Code (commencing with Section 207), Sections 211 to 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 of Title 8 of the Penal Code (commencing with Section 236), Chapter 9 (commencing with Section 240), and for violation of any of the offenses specified in subdivision (0) of Section 667.5.

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4) Any felony or misdemeanor conviction under Penal Code Section 311, et seq., photographic use of children relative to sexual conduct.

c) With respect to all applicants and current employees and volunteers in positions that work with public funds or public records, in addition to above, a conviction of any of the following Penal Code sections shall be grounds for disqualification or termination:

Section 115, 115.3: Use of a false or forged public record or alteration of a certified copy of a public record

Section 424: Embezzlement and falsification of accounts

Title 13, Chapter 4: Any violation of forgery and counterfeiting

5. Responsibility of Applicant, Employee or Volunteer

It is the responsibility of an applicant, employee, or volunteer to report any conviction or arrest pending final adjudication to the City. The information shall be included on all employment applications. Arrest pending final adjudication means an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial, pursuant to Labor Code 432.7(a). If any convictions or arrests pending final adjudication occur while the employee or volunteer is working for the City, the employee or volunteer shall report that information to his or her supervisor who shall forward the information to the Department Head or designee and the Human Resources Director. Alternatively, the employee or volunteer may report the information directly to the Human Resources Director.

6. Procedure for Criminal Background Records Checks

a) Criminal record checks conducted pursuant to this policy shall comply with applicable federal and state law and the following:

(1) The City shall submit a completed Applicant Fingerprint Form to the Department of Justice accompanied by any other forms or information

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required by the Department of Justice in order to obtain the criminal background information.

- (2) Any information obtained from the Department of Justice shall be used to determine whether the applicant, employee or volunteer is disqualified or subject to termination pursuant to this policy.
- (3) The City will not hire a prospective employee until the results of the criminal background information has been received. Any employee will be terminated if the employee is found to have falsified or omitted criminal background information on the employee application
- (4) Every employee or volunteer who has been hired or promoted subsequent to the adoption of this policy, who passed the initial screening, must sign an acknowledgment that conviction of crimes listed herein or determined to be substantially similar by the City shall be grounds for disciplinary action up to and including termination.

b) The City shall enter into a contract with the Department of Justice to obtain any subsequent conviction or arrest information concerning an employee or volunteer.

- 1) Any information about an existing employee's or volunteer's conviction(s) shall be reported to the Human Resources Director.
- 2) Upon receipt of information regarding a conviction and/or arrest pending final adjudication, the Department Head or designee, the Human Resources Director and the City Attorney's office shall evaluate the effect and potential effect of the employees or volunteers record or arrest on his or her position of employment, fellow employees and the public and shall take appropriate action to maximize public safety and minimize potential liability while respecting the rights of the employee or volunteer.
- 3) If the City finds that an employee or volunteer has failed to report a conviction or arrest pending final adjudication, the appropriate disciplinary action, up to and including termination, will be taken.

7. Confidentiality of Criminal History Information

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Criminal history information is confidential and shall not be disclosed, except to those individuals designated to make employment decisions. Persons with access to such information shall sign a form acknowledging that the information is confidential and that civil and criminal penalties, as well as dismissal from employment, may result if the confidential information is misused.

Pursuant to Penal Code Section 11077, the Attorney General is responsible for the security of Criminal Offender Record Information (CORI), and has the authority to establish regulations to assure the security of CORI from unauthorized disclosures. The City shall at all times comply with all terms of its Subscriber Agreement with the Department of Justice and DOJ regulations. The following are requirements as prescribed by the State of California, Department of Justice, Bureau of Criminal Identification and Information, Field Operations and Record Security for any agency that maintains or receives criminal history information:

- a) Record Security - Any questions regarding the release, security or privacy of Criminal Offender Record Information (CORI) is to be resolved by the Human Resources Director or his or her designee.
- b) Record Destruction - Upon determination of employment, CORI and copies of the same shall be destroyed to the extent the identity of the person can no longer be reasonably ascertained.
- c) Record Dissemination - CORI shall be used only for the purpose for which was requested by the hiring department
- d) Record Storage - CORI shall be under lock and key and accessible only to the Department Head or his or her designee who shall be committed to protect CORI from unauthorized access, use or disclosure. Fingerprint records, such as fingerprint cards, "no criminal history" notifications and CORI history shall be destroyed by shredding once a hiring decision or volunteer qualification/disqualification determination has been made.
- e) Record Reproduction - CORI may not be reproduced for dissemination. The City may provide a copy of the DOJ applicant response to the subject of the record.

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- f) Training - The Department Head and employees with access to CORI are required:
 - 1. To understand and enforce this policy.
 - 2. To be fingerprinted and have a criminal history clearance.
 - 3. To have on file a signed copy of the Employee Statement Form for the Use of Criminal Record Information, which acknowledges an understanding of laws prohibiting misuse of CORI.
- g) Penalties - Misuse of CORI is a criminal offense. Violation of this policy regarding CORI may result in suspension, dismissal and/or criminal or civil prosecution and/or administrative action up to and including loss of access to information maintained by the Department of Justice.

8. Consistency With Present Law

Should any change in Federal or State law occur rendering the policies and procedures contained in this policy inconsistent with the new law, the new law shall govern. This shall include, without limitation, any law passed that would prohibit a local agency from inquiring into or considering the criminal history of an applicant or including any inquiry about criminal history on any initial employment application.

CITY COUNCIL AGENDA

Date: **October 23, 2012**
TO: **Honorable Mayor and City Council**
FROM: **Fred Mason, Electric Utility Director**
SUBJECT: **Resolution No. 2012-74 Approving the Amendment to the Joint Powers Agreement of the Western Riverside Council of Governments to Permit the Provision of PACE Services Statewide**

RECOMMENDATION: The City Council approve the Amendment to the Joint Powers Agreement (“JPA”) of the Western Riverside Council of Governments (“WRCOG”) to permit the provision of PACE services Statewide, attached herewith as Exhibit “A”.

JUSTIFICATION: The Executive Committee of WRCOG has directed staff to expand on the success of its HERO Program and implement a Statewide HERO Program by June 2013.

BACKGROUND: The Banning City Council adopted Resolution No. 2009-92 on November 10, 2009, approving a Participation and an Implementation Agreement that allowed for WRCOG to develop and implement a Property Assessed Clean Energy (“PACE”) Program (called the HERO Program in Western Riverside County) that allows for property owners in the City of Banning to finance energy efficiency, water conservation, and renewable energy projects and to pay that financing back through a voluntary assessment on the property owner’s tax bill. The Program has both a residential and commercial component and more information can be found at www.beariversidehero.com.

Since its launch in late 2011, WRCOG’s HERO Program has been very successful. Currently, WRCOG’s HERO Program (residential component only) has approved nearly \$50 million in financing for projects. Because of the Program’s success, WRCOG staff has been examining the possibility of creating a Statewide HERO Program that would allow other jurisdictions in the state to offer HERO to its property owners under a program that would be administered by WRCOG. Jurisdictions that elect to participate in WRCOG’s Program would see considerable benefit as they would avoid the costs and considerable time it takes to develop a program from scratch. WRCOG, by providing a turn-key administrative service, would benefit by receiving revenues for the services provided.

There are two options that WRCOG can pursue in meeting its objective to implement a statewide program which include: 1) using WRCOG’s current JPA; or 2) create a new JPA with a member agency. WRCOG staff is in the process of examining both options and will be making further recommendations to the WRCOG Executive Committee regarding the pros and cons of each option. Regardless of which option the WRCOG Executive Committee selects, the member jurisdictions, including the City of Banning, need to take formal action to adopt the Amendment to the JPA, attached herewith as Exhibit “A”. Banning staff recommends Council approval of said Amendment.

FISCAL DATA: There are no fiscal impacts to the City.

RECOMMENDED BY:



Fred Mason
Electric Utility Director

APPROVED BY:



Andrew J. Takata
City Manager

RESOLUTION NO. 2012-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE AMENDMENT TO THE JOINT POWERS AGREEMENT OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS TO PERMIT THE PROVISION OF PACE SERVICES STATEWIDE

WHEREAS, the City of Banning is a member of the Western Riverside Council of Governments ("WRCOG"); and

WHEREAS, the City adopted Resolution No. 2009-92 on November 10, 2009, approving a Participation and an Implementation Agreement that allowed for WRCOG to develop and implement a Property Assessed Clean Energy ("PACE") Program (called the HERO Program in Western Riverside County); and

WHEREAS, the HERO Program has been very successful and WRCOG would like to create a Statewide HERO Program that would allow other jurisdictions in the State to offer HERO to its property owners; and

WHEREAS, expanding to a Statewide HERO Program requires an Amendment to the existing Joint Powers Agreement, said Amendment is attached herewith as Exhibit "A"; and

WHEREAS, there are no fiscal impacts to the City as a result of approving this Amendment, and the Banning City Council supports the concept of a Statewide HERO Program;

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

SECTION 1. Adopt Resolution No. 2012-74 approving the Amendment to the Joint Powers Agreement of the Western Riverside Council of Governments, attached herewith as Exhibit "A", and authorize the Mayor to execute said Amendment.

SECTION 2. Authorize the Mayor to execute Resolution No. 2012-74. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

PASSED, ADOPTED AND APPROVED this 23rd day of October 2012.

Don Robinson, 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 and Wynder, LLP

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-74 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 23rd day of October, 2012 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit “A”

**AMENDMENT TO THE JOINT POWERS AGREEMENT OF
THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
TO PERMIT THE PROVISION OF PACE SERVICES**

This Amendment to the Joint Powers Agreement ("Amended Agreement") is made and entered into on the ____ day of ____, 2012, by and between seventeen cities located within Western Riverside County and the County of Riverside (collectively the "Parties").

RECITALS

WHEREAS, seventeen cities located within Western Riverside County and the County of Riverside have entered into a Joint Powers Agreement on April 1, 1991, and through subsequent amendments thereto (the "JPA"), to form the Western Riverside Council of Governments ("WRCOG"); and

WHEREAS, on July 21, 2008, Assembly Bill 811 ("AB 811") was signed into law to amend Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") to authorize cities, counties, and cities and counties to establish voluntary contractual assessment programs to fund various renewable energy sources and energy efficiency improvements to property, commonly referred to as a Property Assessed Clean Energy ("PACE") program; and

WHEREAS, the Legislative intent of AB 811 is to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property; and

WHEREAS, Chapter 29 was subsequently amended by the enactment of AB 474 effective January 1, 2010, to enable a PACE program established pursuant to Chapter 29 to finance the installation of water efficiency improvements in addition to the improvements authorized to be financed pursuant to AB 811;

WHEREAS, WRCOG is authorized to implement the purposes of Chapter 29 to establish a PACE program pursuant to the provisions of Government Code Section 6502; and

WHEREAS, WRCOG has determined that it is within the best interests of the communities that it serves, and the State of California, for WRCOG to provide a PACE program pursuant to Chapter 29 as now enacted or as such legislation may be amended hereafter, including the operation of a PACE financing program within Riverside County as well as outside Riverside County; and

WHEREAS, WRCOG desires to allow jurisdictions outside WRCOG's jurisdictional boundaries to participate in WRCOG solely for the purpose of facilitating WRCOG's implementation of PACE programs within their jurisdictional boundaries, but without providing

those local jurisdictions any of the rights common to the members within WRCOG's jurisdiction pursuant to the JPA; and

WHEREAS, pursuant to Government Code sections 6500 *et seq.*, the parties to the JPA desire to amend the JPA to allow for the provision of PACE services, including the operation of an PACE financing program within and outside Riverside County.

MUTUAL UNDERSTANDINGS

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

Section 1: The last sentence of Section 2.1 of the Agreement shall be amended to read as follows"

"Only the parties identified in this section and Associate Members approved under section 8.2 of this Agreement, if any, shall be considered contracting parties to this Agreement under Government code section 6502, provided that the rights of any Associate Member under this Agreement shall be limited solely those rights expressly set forth in a PACE Agreement authorized in section 8.2 of this Agreement."

Section 2: The heading of Section VIII to the JPA is hereby amended to read as follows:

"PACE IMPLEMENTATION AND PARTICIPATION AGREEMENTS;
ASSOCIATE MEMBERSHIP".

Section 3: Section 8.2 shall be added to the JPA and shall read as follows:

8.2 PACE Agreements; Associate Membership.

WRCOG shall be empowered to establish and operate one or more Property Assessed Clean Energy ("PACE") programs pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code, and to enter into one or more agreements, including without limitation, participation agreements, implementation agreements and joint powers agreements and amendments thereto to fulfill such programs both within and outside the jurisdictional boundaries of WRCOG.

WRCOG, acting through its Executive Committee, shall be empowered to establish an "Associate Member" status that provides membership in WRCOG to local jurisdictions that are outside WRCOG's jurisdictional boundaries but within whose boundaries a PACE program will be established and implemented by WRCOG. Said local jurisdictions shall become Associate Members of WRCOG by adopting one or more agreements (the "PACE Agreement") on the terms and conditions established by the Executive Committee and consistent with the requirements of the Joint Exercise of Powers Act, being 5 of Division 7, Title 1 of the California Government Code (Sections 6500 et seq.) The

rights of Associate Members shall be limited solely to those terms and conditions expressly set forth in the PACE Agreement for the purposes of implementing the PACE program within their jurisdictional boundaries. Except as expressly provided for by the PACE Agreement, Associate Members shall not have any rights otherwise granted to WRCOG's members by this Agreement, including but not limited to the right to vote, right to amend this Agreement, and right to sit on committees or boards established under this Agreement or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee.

Section 4: This amendment is to become effective in accordance with Section 9.1 of the JPA.

Section 5: All other provisions and terms of the JPA are to remain unchanged.

Section 6: This Amendment may be executed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have caused this Amended Agreement to be executed and attested by their officers thereunto duly authorized as of the date first above written.

[SIGNATURES ON FOLLOWING PAGES]

**SIGNATURE PAGE TO THE
AMENDMENT TO THE JOINT POWERS AGREEMENT OF
THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
TO PERMIT THE PROVISION OF PACE SERVICES**

ATTEST:

City Clerk
City of Banning

CITY OF BANNING

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Calimesa

CITY OF CALIMESA

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Canyon Lake

CITY OF CANYON LAKE

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Corona

CITY OF CORONA

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Eastvale

CITY OF EASTVALE

By: _____

By _____

Dated: _____

Mayor

ATTEST:

City Clerk
City of Hemet

CITY OF HEMET

By: _____

By _____

Dated: _____

Mayor

ATTEST:

City Clerk
City of Jurupa Valley

CITY OF JURUPA VALLEY

By: _____

By _____

Dated: _____

Mayor

ATTEST:

City Clerk
City of Lake Elsinore

CITY OF LAKE ELSINORE

By: _____

By _____

Dated: _____

Mayor

ATTEST:

City Clerk
City of Menifee

CITY OF MENIFEE

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Moreno Valley

CITY OF MORENO VALLEY

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Murrieta

CITY OF MURRIETA

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Norco

CITY OF NORCO

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Perris

CITY OF PERRIS

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Riverside

CITY OF RIVERSIDE

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of San Jacinto

CITY OF SAN JACINTO

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Temecula

CITY OF TEMECULA

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Wildomar

CITY OF WILDOMAR

By: _____

By _____
Mayor

Dated: _____

ATTEST:

County Clerk
County of Riverside

COUNTY OF RIVERSIDE

By: _____

By _____
Chairman

Dated: _____

CITY COUNCIL AGENDA

Date: **October 23, 2012**
TO: **Honorable Mayor and City Council**
FROM: **Fred Mason, Electric Utility Director**
SUBJECT: **Resolution 2012-79 Approval of the Updated Economic Development Electric Rate Schedule and Banning Economic Development Rate Agreement**

RECOMMENDATION: The City Council adopt Resolution 2012-79 approving the updated Economic Development Electric Rate Schedule and Banning Economic Development Rate Agreement, attached herewith as Exhibit "A" and "B" respectively.

JUSTIFICATION: On May 25, 2010, the City Council adopted Resolution No. 2010-22, which approved the Economic Development Electric Rate Schedule ("ED Rate") and the Banning Economic Development Rate Agreement ("ED Agreement"). Updating these two documents is essential to attracting new businesses to the City of Banning.

BACKGROUND: The City Council approved the ED Rate and ED Agreement with the intent and expectation that it would help attract businesses to the City of Banning, or encourage existing customers to expand their businesses. However, in the two years the ED Rate has been available, we have only had one customer execute the ED Agreement with the City. That was the San Gorgonio Memorial Hospital, with its expansion project.

The original ED Rate was geared toward attracting larger businesses, such as full-sized supermarkets, manufacturing facilities, or large refrigerated warehouses, and it had a minimum requirement of 200 kilowatts ("kW") Peak Demand. Staff has reviewed the City's current economic strategies and has determined that reducing the minimum requirement to 20 kW Peak Demand would allow the City to offer Electric Utility rate incentives to investors looking to locate restaurants and medium sized stores in Banning.

The proposed 20 kW Peak Demand would also apply to existing businesses looking to expand their operations and potentially move into larger facilities. This would encourage those existing customers to stay in Banning instead of looking to other cities for more space.

The proposal to reduce the Peak Demand requirement to 20 kW does not change any other aspect of the existing ED Rate or ED Agreement. The ED Rate would still 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 ED 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 update to the 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 updated ED Rate and ED Agreement would become effective November 1, 2012.

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

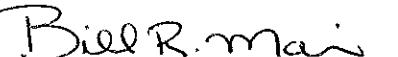
Electric Utility Director

APPROVED BY:


Andrew J. Takata

City Manager

RECOMMENDED BY:


Bill Manis

Economic Development Director

RESOLUTION NO. 2012-79

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE UPDATED 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, on May 25, 2010 the City Council adopted Resolution No. 2010-22 which approved the Economic Development Electric Rate Schedule (“ED Rate”) and the Banning Economic Development Rate Agreement (“ED Agreement”); and

WHEREAS, Staff has reviewed the City’s current economic strategies and has determined that reducing the minimum eligibility requirement to 20 kilowatts of Peak Demand would allow the City to offer Electric Utility rate incentives to investors looking to locate restaurants and medium sized stores in Banning; and

WHEREAS, the proposal to reduce the Peak Demand requirement to 20 kilowatts does not change any other aspect of the Economic Development Electric Rate Schedule and Banning Economic Development Rate Agreement, attached herewith as Exhibit “A” and “B” respectively, and will not have a negative impact on other Banning Electric Utility customers, and will provide a tool to the City to attract additional commercial businesses to Banning by offering a discounted startup electric rate for a wider range of businesses;

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

SECTION 1. Adopt Resolution No. 2012-79 approving the updated 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 November 1, 2012, and execute and administer said Agreement with qualified Banning Electric Utility commercial and industrial customers.

SECTION 2. Authorize the Mayor to execute Resolution No. 2012-79. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

PASSED, ADOPTED AND APPROVED this 23rd day of October 2012.

Don Robinson, 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 and Wynder, LLP

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-79 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 23rd day of October, 2012 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit “A”

CITY OF BANNING
Electric Division

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 20 kW and an annual peak demand of at least 40 kW, based upon the business' past electrical demand or reasonable projections of such demand, as determined by the Electric 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 20 kW based upon the business' past electrical demand or reasonable projections of such demand, as determined by the Electric 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 and Demand Charge under the customer's otherwise applicable rate schedule will be reduced as follows:

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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.

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Exhibit “B”

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.

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 Base Period Usage.

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 twenty (20) 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 10.3, 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 twenty (20) kW and an annual peak demand of at least forty (40) 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 20 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 and Demand 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 twenty (20) kilowatts and an annual peak demand of at least forty (40) 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 twenty (20) 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 may 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.

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

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

WITNESS my hand and official seal.

Signature: _____

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

PARTNER(S) LIMITED
ATTORNEY-IN-FACT GENERAL
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER _____

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

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

WITNESS my hand and official seal.

Signature: _____

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

DESCRIPTION OF ATTACHED DOCUMENT

PARTNER(S) LIMITED
 GENERAL
 ATTORNEY-IN-FACT
 TRUSTEE(S)
 GUARDIAN/CONSERVATOR
 OTHER _____

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 "A"
CUSTOMER SITE(S); METERED ACCOUNTS

CITY COUNCIL AGENDA

DATE: October 23, 2012

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Adopt Resolution No. 2012-81, "Approving Payment for Reimbursement of Asphalt Repairs to the Sun Lakes Country Club"

RECOMMENDATION: The City Council of the City of Banning Adopt Resolution No. 2012-81, "Approving Payment for Reimbursement of Asphalt Repairs to the Sun Lakes Country Club."

JUSTIFICATION: It is essential that the City of Banning reimburse the Sun Lakes Country Club for costs incurred for the final asphalt repairs at locations of water main and service repairs.

BACKGROUND: The City of Banning owns, operates and maintains the water and sewer infrastructure within the Sun Lakes Country Club gated community. Throughout the past two years the City's Water Department has repaired many water main and service leaks. As a result, the streets, which are owned and maintained by the Sun Lakes Country Club, were temporarily repaired in the affected areas. City staff has continuously worked with the Sun Lakes Country Club staff and have mutually agreed that it is both administratively and financially efficient for the final asphalt repairs to be completed by contractors hired by the Sun Lakes Country Club as part of its annual resurfacing projects.

The cost for the repairs of the temporary patches, which have been reviewed by staff and found to be reasonable, is equal to \$45,325.00 as shown in exhibit "A".

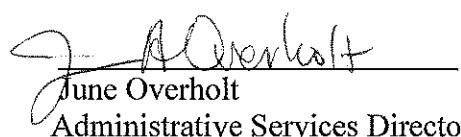
FISCAL DATA: Funds in the amount of \$45,325.00 are available in the Fiscal Year 2012-13 Water Operations Budget, Account No. 660-6300-471.45-08.

RECOMMENDED BY:



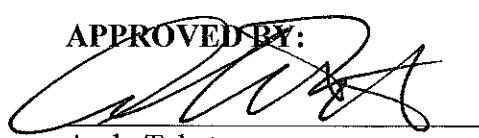
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2012-81

**RESOLUTION OF THE BANNING CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING PAYMENT FOR REIMBURSEMENT OF ASPHALT
REPAIRS TO THE SUN LAKES COUNTRY CLUB**

WHEREAS, the City of Banning owns, operates and maintains the water and sewer infrastructure within the Sun Lakes Country Club gated community; and

WHEREAS, the City's Water Department has repaired many water main and service leaks within the Sun Lakes Country Club, which have resulted in temporary asphalt repairs on the privately owned streets; and

WHEREAS, City staff has continuously worked with the Sun Lakes Country Club staff and have mutually agreed that it is both administratively and financially efficient for the final asphalt repairs to be completed by contractors hired by the Sun Lakes Country Club as part of its annual resurfacing projects; and

WHEREAS, the cost for recent repairs of the temporary patches has been reviewed and found to be reasonable and is equal to \$45,325.00.

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

SECTION I. The City Council adopts Resolution No. 2012-81, "Approving the Payment for Reimbursement of Asphalt Repairs to the Sun Lakes Country Club" in the amount of \$45,325.00.

PASSED, ADOPTED AND APPROVED this 23rd day of October, 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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

David J. Aleshire, Authority Counsel
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-81 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23rd day of October, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Exhibit "A"
Invoice

INVOICE**Sun Lakes Country Club**

850 S. Country Club Drive
Banning, California 92220
Phone: 951-845-2191

DATE: OCTOBER 11, 2012

FOR: STREET REPAIR - REIMBURSMENT

TO:
THE CITY OF BANNING, PUBLIC UTILITIES DEPARTMENT
176 E. LINCOLN STREET
BANNING, CA 92220
ATT: PERRY GERDES

DESCRIPTION	AMOUNT
STREET REPAIRS: 1. SAWCUT, TOOK OUT & HAULED AWAY 5,910 SUARE FEET TO A DEPTH OF 4" IN 108 AREAS. 2. REPLACED APPROX. 5,910 SQUARE FEET WITH 4" ASPHALT LAID IN 2 COURSES IN 108 AREAS.	\$45,325.00
TOTAL	
Make all checks payable to Sun Lakes Country Club Payment is due within 30 days. If you have any questions concerning this invoice, contact Ann Kato, Maintenance Clerk, 951-769-6644 or e-mail akato@pcmiinternet.com	
THANK YOU FOR YOUR BUSINESS!	\$45,325.00

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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: **October 23, 2012**

TO: **City Council**

FROM: **Duane Burk, Director of Public Works**

SUBJECT: **Resolution No. 2012-82, "Approving a Professional Services Agreement to Western Riverside Council of Governments for Residential and Commercial Diversion Services"**

RECOMMENDATION: The City Council adopt Resolution No. 2012-82, "Awarding a Professional Services Agreement to Western Riverside Council of Governments for Residential and Commercial Diversion Services" in the amount of \$100,000.00 (\$50,000.00 per year for FY 2012/2013 and FY 2013/2014).

JUSTIFICATION: It is essential to award a professional services agreement to Western Riverside Council of Governments ("WRCOG") in order to continue providing Residential and Commercial Diversion Services for the City of Banning.

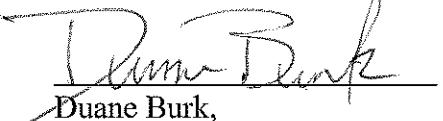
BACKGROUND: WRCOG is an association that represents member local governments, mainly cities and counties, that seek to provide cooperative planning, coordination, and technical assistance on issues of mutual concern that cross jurisdictional lines. Some of the major areas that WRCOG assist local agencies and counties with are regional transportation issues, community growth and development and environmental issues. WRCOG has continuously provided the City of Banning with valuable services within the realm of environmental compliance. The most recent professional services agreement between the City of Banning and WRCOG expired on June 30, 2012 and thus it is prudent to issue a new contract Agreement.

The scope of services include staffing for outreach events, promotional development, chamber events, commercial business visits, household hazardous waste and bulky goods events, business workshops, and franchise agreement assistance. The services provided ensure the City is in compliance with AB939 which requires mandated local jurisdictions to meet the solid waste diversion goal of 50 percent. The California Integrated Waste Management Board determines this diversion by looking at the base-year solid waste generation to determine the amount of solid waste diverted. Each jurisdiction is required to create an Integrated Waste Management Plan that looks at recycling programs, purchasing of recycled products and waste minimization. WRCOG's services also ensure the City is in compliance with AB341 which requires mandatory commercial recycling by certain businesses and public entities and sets a state wide 75 percent waste diversion goal.

The proposed professional services agreement is for twenty-four (24) months beginning July 1, 2012 and ending June 30, 2014 with a thirty (30) day termination clause and with a provision to extend the contract for an additional two years, based upon an annual review of the provided services.

FISCAL DATA: The term of this agreement is for two years and the total funding required is in the amount of \$100,000.00 (\$50,000.00 per year for FY 2012/2013 and 2013/2014). The required funds have been budgeted, for both years, in Refuse Account No. 690-9600-453.33-11 (Professional Services).

RECOMMENDED BY:



Duane Burk,

Director of Public Works

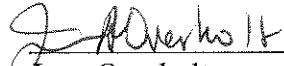
APPROVED BY:



Andy Takata

City Manager

REVIEWED BY:



June Overholt,

Administrative Services Director/
Deputy City Manager

RESOLUTION NO. 2012-82

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT TO
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS FOR RESIDENTIAL AND
COMMERCIAL DIVERSION SERVICES**

WHEREAS, Western Riverside Council of Governments (“WRCOG”) is an association that represents member local governments, mainly cities and counties, that seek to provide cooperative planning, coordination, and technical assistance on issues of mutual concern that cross jurisdictional lines such as regional transportation issues, community growth and development and environmental issues.; and

WHEREAS, WRCOG has continuously provided the City of Banning with valuable services within the realm of environmental compliance; and

WHEREAS, the most recent professional services agreement between the City of Banning and WRCOG expired on June 30, 2012 and thus it is prudent to issue a new contract Agreement; and

WHEREAS, scope of services include staffing for outreach events, promotional development, chamber events, commercial business visits, household hazardous waste and bulky goods events, business workshops, and franchise agreement assistance; and

WHEREAS, WRCOG’s services will ensure that the City of Banning remains in compliance with AB939 (solid waste diversion) and AB341 (commercial recycling); and

WHEREAS, the proposed professional services agreement is for two years: FY 2012/2013 and FY 2013/2014 and includes a provision to extend the agreement for an additional two years based upon a review of the services provided.

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

SECTION 1. City Council adopts Resolution No. 2012-82, “Approving a Professional Services Agreement to Western Riverside Council of Governments for Residential and Commercial Diversion Services” in the amount not to exceed \$100,000.00 (\$50,000.00 per year for FY 2012/2013 and 2013/2014).

SECTION 2. The City Manager is authorized to execute the professional services agreement between the City of Banning and WRCOG for two years: FY 2012/2013 and FY 2013/2014. This authorization will be rescinded if the contract agreements are not executed within forty-five (45) days of the date of this resolution.

PASSED, APPROVED, AND ADOPTED this 23rd day of October, 2012.

Don Robinson, 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 A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-82 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23rd day of October, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL REGULAR MEETING
REPORT OF OFFICERS**

DATE: **October 23, 2012**

TO: **City Council**

FROM: **David J. Aleshire, City Attorney**

SUBJECT: **Revised Draft of Manual of Meeting Procedures and Civility Code for All City Bodies/Commissions**

RECOMMENDATION:

(1) That the City Council approve the accompanying "MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT BODY/COMMISSION MEETINGS" (the "Manual"). Approval will be via the proposed RESOLUTION NO. 2012-83, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AND ADOPTING A MANUAL OF POLICIES AND PROCEDURES FOR THE CONDUCT OF MEETINGS BY CITY LEGISLATIVE BODIES (the "Resolution").

(2) If the Council approves the Manual, the Manual will rescind all prior-adopted resolutions that may conflict with the Manual's provisions.

(3) If the Council approves the Manual, it is further recommended that the Council direct City Staff and the City Attorneys' Office to prepare a "clean-up" ordinance to harmonize certain provisions of the existing Banning Municipal Code with the new Manual.

BACKGROUND:

On November 8, 2011, the City Council was presented with a draft of the attached Manual. At that meeting, the Council provided feedback to City Staff on issues of commission appointments, the manner in which documents were prepared for meetings; the manner in which future agenda items are added to the agenda, conflicts, speaker cards, agenda item descriptions, and other general issues of meeting protocol.

Based on prior feedback from the Council and further legal research and edits from the City Attorneys' office, the draft Manual has been substantially revised since November 8, 2011. The revised Manual is attached to the accompanying Resolution as *Attachment "A"*.

DISCUSSION:

The revised Manual attached hereto differs greatly from the City's prior "Rules of the City Council" adopted via Resolution No. 1999-31 and other prior rules of conduct for Council and City commissions (the "Prior Rules"). Many of the Prior Rules were internally inconsistent. As revised, the Manual proposes to supersede all Prior Rules pertaining to the meetings of the City Council and other City commissions, thus making a "single source" of rules for meeting procedures and codes of conduct.

The revised Manual also presents certain issues (like censure and commissioner duties) that may conflict with existing Banning Municipal Code provisions. Upon the Manual's adoption, City Staff or the City Attorney will need to process an ordinance to harmonize Municipal Code provisions with the new Manual.

Major substantive differences between the Manual and the Prior Rules are as follows:

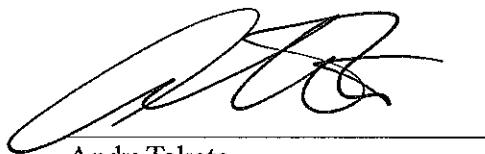
- ❖ The Prior Rules applied only to City Council meetings, leaving little or no guidance for subsidiary commissions like the Utility Authority, Planning Commission, Housing Authority Board and Finance Authority. Rather than having separate meeting rules for each constituent body, the Manual has been revised to apply to *all* City legislative bodies. Creating a single source for all codes of meeting conduct and civility also minimizes the risk of internal inconsistencies between rules.
- ❖ Reorganization to mirror the chronology of meeting procedures (i.e., agenda, then meeting time, then order of meeting procedure, then motions procedure, etc.) and removal of redundant or repetitive provisions.
- ❖ The Manual adds provisions for Regular Meetings and Emergency Meetings. The provisions on Special Meetings were also expanded.
- ❖ Agenda provisions were greatly expanded to include specific Brown Act requirements, the agenda requirements for regular meetings were separated from the requirements for special meetings, and a provision on the affidavit of posting was added.
- ❖ Rules for Closed Sessions have been expanded to include the Brown Act's agenda requirements, public comment mandate, and the requirements of "announcing into" and "reporting out" of closed session.
- ❖ We have replaced all of the Prior Rules regarding "motions" (Prior Rules Section II(D)) with an "all-in-one" Motions Chart to be attached to the Manual.
- ❖ The Manual greatly expands the "Public Participation" section provided in the Prior Rules. New provisions include:
 - Guidance on how the legislative body may direct staff to respond to public comments.
 - Further rules on the requirement of speaker cards—i.e., the fact that speakers may remain anonymous and cannot be required to fill-out information as a condition of speaking.
 - Further guidance on time limits for speakers, including allowances of extensions of time as reasonably necessary to allow the speaker's message, without repetition or unnecessary tangents on the part of the speaker.
 - Expanded guidance on when public comment may be required and whether/when additional public comment can be heard after a motion is on the table.

- A new rule regarding "Items from Members" of the legislative body.
- ❖ The Manual's rules regarding "bias" are new.
- ❖ A proviso has been added delineating the Mayor as the City's spokesperson for media relations on matters of official City policies or positions. This reflects a similar provision in the City's Civility Policy.
- ❖ There is an expansion on the rules of decorum. Decorum is now governed under three distinct rules: decorum of the legislative body members, decorum of City employees, and decorum of the public. The rules on public decorum now provide explanations and examples of the type of public decorum deemed unacceptable.
- ❖ The Manual adds an administrative procedure specifically for persons seeking to commence a judicial action for alleged Brown Act requirements. The administrative procedure established a hearing and cure process, as well as a limitations period for such actions.

RECOMMENDED BY:

David J. Aleshire
City Manager

REVIEWED BY:



Andy Takata
City Manager

Attachment:

- A. Resolution No. 2012-83, Adopting "MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT BODY/COMMISSION MEETINGS".

RESOLUTION NO. 2012-83

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING, CALIFORNIA, APPROVING AND ADOPTING A
MANUAL OF POLICIES AND PROCEDURES FOR THE
CONDUCT OF MEETINGS BY CITY LEGISLATIVE BODIES**

WHEREAS, The City Council and all City bodies are expected to conduct themselves with civility and procedural efficiency in meetings and during interactions with City staff, the public and each other, and

WHEREAS, The City's existing meeting protocols are memorialized in multiple resolutions, ordinances and policies that were difficult to find and/or were susceptible to internal conflict. Moreover, existing rules require updating to capture changes in law and policy. Therefore, the City Council hereby finds that it is in the best interest of the administration of public business to have clear, up-to-date procedures for the conduct of meetings and standards of civility contained in a single policy; and

WHEREAS, The "MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT BODY/COMMISSION MEETINGS" (the "Manual") attached hereto as Attachment "A" is now proposed for adoption to replace prior protocols for meeting procedures and civility policies.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING AS FOLLOWS:

SECTION 1. The above Recitals are true and correct and incorporated into the terms and findings of this Resolution by this reference.

SECTION 2. Based on the foregoing recitations and all evidence presented to and considered by the City Council, the City Council hereby adopts the Manual attached hereto as Attachment "A" to be the official Manual of meeting procedures and codes of conduct applicable to all legislative bodies of the City

SECTION 3. Adoption of the Manual rescinds and supersedes all prior City resolutions setting forth rules of procedure for the conduct of meetings by City legislative bodies. Wherever there is a conflict between the Manual and any prior City resolution, the terms and rules in the Manual shall govern. Resolutions more specifically superseded by the Manual include, without limitation, the following:

- City of Banning Resolution No. 2004-43;
- City of Banning Resolution No. 1999-31;
- City of Banning Resolution No. 2003-06;
- City of Banning Resolution No. 2000-41;
- Banning CRA Resolution No. 2010-13; and
- Banning CRA Resolution No. 1990-04.

SECTION 4. City staff and the City Attorney's office are hereby directed to review and process (for presentation to Council) such amendments to the Banning Municipal Code ("BMC") as necessary to remove and/or harmonize any conflicts between the BMC and the adopted Manual provisions.

SECTION 5. The City Clerk shall certify to the passage and adoption hereof.

PASSED, APPROVED, AND ADOPTED this 23rd day of October, 2012.

Don Robinson, 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 A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-80, was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 9th day of October, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

OUTLINE OF PROCEDURAL MANUAL PROVISIONS

Manual Applies to Council; Agency; Financing Authority; Housing Authority; Utility Authority; All Commissions

A. Agendas (3.1-3.4; 5.1-5.10)

1. City Manager generally has the authority to set the agenda. (5.1)
2. Any Councilmember may request a matter be put on an agenda. If significant staff work involved, CM can bring it to an agenda under pending items and Council can decide whether they want it agendized for discussion. (5.1)
3. Permits consent calendars and defines what isn't permitted on consent calendar: ordinances; matters involving split votes or public controversy.
4. List order of agenda.
5. Permits an agenda item for "Council Agenda – New Business" " and where announcements permitted with no discussion.

B. Ordinances and Resolutions and Contracts (5.3 - 5.6)

1. Defines matter appropriate for ordinance *vs.* resolution.
2. Defines vote requirements--resolutions require 3 votes.
3. Urgency circumstances defined where resolution can be prepared at a meeting.
4. Contracts may be put in final form by legal counsel.

C. Boards and Commissions (6.4)

1. Defines legislative bodies and advisory bodies subject to the Brown Act. (1.2(a))
2. Permits creation of ad hoc council subcommittees not subject to the Brown Act.
3. Permits formation boards and commissions subject to the Brown Act.
4. Provides that appointments are by Mayor with the consent of Council.
5. Commissions not permitted to create subcommittees.

D. Closed Sessions (4.1 - 4.4)

1. Those persons not relevant to the closed session matter are excluded.
2. A minute book may be kept of the proceedings.
3. Revealing any matter from closed session can subject the person to censure.

E. Public Comments (7.1 – 7.4)

1. Time limits are 3 minutes and 5 minutes for public hearing but applicant not limited.

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2. Public comment periods include initial comment period on non-agenda items; comment on agenda items.
3. Speaker cards provided for but voluntary.

F. Hearings (8.1 – 8.4)

1. Before the hearing, Councilmembers limited to factual questions of staff and speakers. Not to engage in debate.
2. Presiding Officer to make it clear when hearing is opened or closed. No questions of speakers or public comment after hearing closed.
3. Hearing must be fair and impartial with decision based on findings required by law.
4. No expression of opinion until hearing is closed.
5. Avoid extra meeting contact with interested persons. Encourage participation in hearing.
6. Presiding Officer can control conduct of hearing--representative speakers, etc. Set any rules at beginning and keep fair to each side.
7. Be attentive during hearings.

G. Conduct of Members

1. Don't represent position of City or promise City action. (9.2; 9.10)
2. Don't speak in derogatory fashion concerning colleagues, employees, citizens. (10.1(f))
3. Mayor speaks officially for City rather than councilmembers. (9.2)
4. Councilmembers in correspondence represent their own position rather than City unless authorized by Council. (9.2)
5. Commissioners don't speak for City. (9.2)
6. No Conflicts. Can consult with City Attorney but advice not binding and no attorney-client confidentiality. (9.6(b))
7. Use City email account. Emails subject to the Brown Act--no development of collective action. Public Records Act, too. (9.3)
8. Formal process for censure for wrongful conduct involving hearing before City Council. (10.3)
9. City Attorney can file amicus briefs. (9.6 (d))

H. Procedures

1. Abstentions discouraged but permitted where appearance impropriety even if no financial conflict.
2. Motions to rescind clarified so that matter can be rescinded if later legislative session. (11.4)
3. Defines process to correct an earlier action in violation of Brown Act. (12.1 – 12.3)
4. Includes Table of Motions and Procedural Actions.

MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT BODY/COMMISSION MEETINGS

ARTICLE I – SCOPE

1.1 Application of Rules

This Manual (the “Manual”) shall establish the procedures for the conduct of all meetings of the City of Banning City Council, Successor Agency to the Banning Community Redevelopment Agency, Housing Authority and other constituent, governing bodies and commissions.

This Manual rescinds and supersedes all prior City resolutions setting forth rules of procedure for the conduct of meetings by City Legislative Bodies (defined below). Wherever there is a conflict between this Manual and any prior City resolution, the terms and rules in this Manual shall govern. Resolutions more specifically superseded by this Manual include, without limitation, the following:

- City of Banning Resolution No. 2004-43;
- City of Banning Resolution No. 1999-31;
- City of Banning Resolution No. 2003-06;
- City of Banning Resolution No. 2000-41;
- Banning CRA Resolution No. 2010-13; and
- Banning CRA Resolution No. 1990-04.

1.2 Definitions

The following definitions shall apply to these rules and procedures:

- a) “Legislative Body” means any quorum of any council, board, commission or standing committee (as defined in Government Code § 54952), or other governing body of the City of Banning that is subject to the Brown Act (Government Code § 54950 *et seq.*). This includes the Banning City Council, Banning Successor Agency to the former Redevelopment Agency, Banning Housing Authority Board, Banning Utility Authority, Banning Financing Authority, Planning Commission, Parks and Recreation Commission, Civil Service Commission and any standing committee subject to the Brown Act. The term “Legislative Body” does not include Non-Governing Bodies, as defined below.
- b) “Presiding Officer” means the chairperson of the Legislative Body. For example, this refers to the Mayor when read in the context of the City Council, the Board Chair in the cases of the Successor Agency to the Redevelopment Agency and/or the Housing Authority, and the Chair of any Commission.

- c) "Vice Chair" means the vice chairperson to the Presiding Officer. For example, the Vice Chair means the Mayor Pro Tempore in the case of the City Council, the Vice Chairperson in the cases of the Successor Agency to the former Redevelopment Agency and/or Housing Authority, and the Vice Chairperson of any Commission.
- d) "Clerk/Secretary" means the person responsible for taking and maintaining the record of proceedings for all meetings, preparation of agendas, calendar clerk and custodian of rules, resolutions, ordinances and Legislative Body records. For example, the Clerk/Secretary refers to the City Clerk in the case of the City and the Agency Secretary in the cases of the Successor Agency to the former Redevelopment Agency and/or the Housing Authority.
- e) "General Counsel" means the legal advisor to the Legislative Body, such as the City Attorney in the case of a City Council meeting, or Agency Counsel in the cases of the Successor Agency to the former Redevelopment Agency and/or Housing Authority.
- f) "City Manager" means the Chief Executive Officer of the City, the Successor Agency to the former Redevelopment Agency and Housing Authority. The City Manager may serve as the Secretary to the Successor Agency or Housing Authority, and the City Manager can designate appropriate staff to serve as the clerk/secretary to any Commission of the City.
- g) "Non-Governing Bodies" means wholly advisory committees and bodies that are not subject to the provisions of the Brown Act.
- h) "Sub-Legislative Bodies" means such advisory committees which are subject to the Brown Act but are not "governing" Legislative Bodies.

These rules and procedures are enacted pursuant to authority granted by Government Code §§ 36813 and 54954. The purpose of this Manual is to provide that the Legislative Bodies' procedures will be consistent with the Brown Act and also to establish procedures which will be convenient for the public and contribute to the orderly conduct of any Legislative Bodies' business. The procedures herein are in addition to, and not in place of, applicable ordinances and statutes and in the event of conflict between this Manual and applicable ordinances or statutes, the latter shall govern. In the event that any state statute referenced herein is renumbered, the reference herein shall be deemed to refer to the successor statute dealing with the same subject matter.

ARTICLE II – MEETINGS

2.1 Regular Meetings

Unless otherwise specified by a resolution or ordinance applicable to specific Legislative Body, the regular meetings of all Legislative Bodies shall be held on the

second and fourth Tuesday of each month at the time designated by the Legislative Body, in the Council Chambers at City Hall, 99 East Ramsey Street, Banning, California 92220, or at such other locations as the Legislative Body may from time to time designate by resolution, in the order of adjournment, or in the notice of call of any special meeting. In the event a day of meeting shall be a legal holiday, said meeting shall be held on the next business day.

2.2 Special Meetings

The Presiding Officer may, when he or she deems it expedient, or upon the written request of a majority of the Legislative Body, call a special meeting of the Legislative Body for the purpose of transacting the business designated in the call. The means and method for calling such special meeting shall be as set forth in the Brown Act as it now exists or may hereafter be amended. At such special meeting, no business shall be considered other than as designated in the call.

2.3 Special Emergency Meetings

A special emergency meeting may be called by the Presiding Officer or by a majority of the Legislative Body where an emergency exists:

(a) A work stoppage, terrorist act or threat, crippling disaster or other activity which severely impairs public health or safety as determined by the majority of the Legislative Body; or

(b) Such other circumstance specified by State law as authorizing the conduct of an emergency meeting. Any special emergency meeting shall be called, noticed, and conducted only in accordance with the procedures set forth in State law.

2.4 Attendance

A majority of members of the Legislative Body shall constitute a quorum. Less than a majority may adjourn from time to time, and may compel the attendance of absent members. Any member who fails to attend any of the meetings of the Legislative Body for 60 days, unless such absences are excused, shall surrender the office and be deemed to have surrendered the office.

2.5 Study Sessions

The Legislative Body may meet informally in conference or "study" sessions regarding concerns of the Legislative Body to interchange information, provided that all discussions and conclusions shall be informal. Such meeting shall be called in the same manner as for special meetings or adjourned meetings, as applicable, and be subject to the Brown Act. Each notice shall indicate that an opportunity for public comment shall be provided before any matter shall be determined. When a meeting has been designated a Study Session, the Legislative Body shall not take any action with respect to the matter under study except with prior public notice, appearing on a properly posted agenda, of such intent to take action.

ARTICLE III—NOTICE AND AGENDA

3.1 Notice and Agenda for Regular Meetings

For every regular Legislative Body meeting, the Clerk/Secretary or his or her designee shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all the items of business to be discussed at the meeting as set forth in Article V. The notice and agenda may be combined in a single document.

The notice and agenda must be posted at least seventy-two (72) hours before the regular meeting in a location freely accessible to public twenty-four (24) hours a day during the seventy-two (72) hour period and where the notice and agenda is not likely to be removed or obscured by other postal material. Specifically, the notice and agenda shall be posted at the place indicated below, and/or at such other location(s) as the Clerk/Secretary may designate:

CITY HALL COUNCIL CHAMBERS
CITY HALL LARGE CONFERENCE ROOM
OTHER CITY HALL CONFERENCE ROOMS
LIBRARY

3.2 Notice and Agenda for Special Meetings

For every special meeting, the Clerk/Secretary or his or her designee shall post a written notice specifying the time and place of the special meeting and the business to be transacted must be sent to each member of the Legislative Body (unless the member has filed a written waiver of notice with the Clerk/Secretary) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. The notice shall serve as the agenda for the special meeting and shall contain a brief description of all the items of business to be discussed at the meeting as set forth in Article V.

The notice for a special meeting shall be conspicuously posted at least twenty-four (24) hours prior to the special meeting in a location that is freely accessible to the public twenty-four (24) hours a day and where the notice are not likely to be removed or obscured by other posted material. Specifically, the notice shall be posted at the place indicated below, and/or at such other location(s) as the Clerk/Secretary may designate:

CITY HALL COUNCIL CHAMBERS
CITY HALL LARGE CONFERENCE ROOM
OTHER CITY HALL CONFERENCE ROOMS
LIBRARY

3.3 Notice and Agenda for Adjourned Meetings

The Legislative Body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. If a

quorum is not present, less than a quorum may so adjourn. If all members are absent from any regular or adjourned regular meeting, the Clerk/Secretary may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be delivered personally to each member of the Legislative Body at least twenty-four (24) hours before the adjourned meeting. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held, within twenty-four (24) hours after the time of adjournment. When a regular or adjourned regular meeting is adjourned as provided herein, the resulting adjourned regular meeting shall be a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings. If the subsequent meeting is conducted within five (5) days of the original meeting, matters properly placed on the agenda for the original meeting may be considered at the subsequent meeting. If the subsequent meeting is more than five (5) days from the original meeting, a new agenda must be prepared and posted pursuant to Government Code Section 54954.2.

3.4 Affidavit of Posting

Immediately following the posting of the notice and agenda, the Clerk/Secretary or his or her designee shall complete an Affidavit of Posting, in a form to be developed by the Clerk/Secretary. The Affidavit of Posting shall indicate the time of the posting, the location(s) of the posting, and shall be signed under penalty of perjury. The Clerk/Secretary shall retain all such affidavits, together with a copy of each notice and agenda so posted. The affidavit, notice, and agenda shall be retained at least two (2) years subsequent to the date of posting, and pursuant to Government Code § 34090, shall not be destroyed by the Clerk/Secretary thereafter except in accordance with the City's record retention policies.

ARTICLE IV– CLOSED SESSIONS

4.1 Generally

The Legislative Body may hold closed sessions during a regular or special meeting, or at any time otherwise authorized by law, to consider or hear any matter which it is authorized by State law to hear or consider in closed session. Public comment shall be permitted on closed session matters prior to the closed session. If a closed session is included on the agenda, the description of the item shall meet the requirements of and shall identify the statutory basis for the closed session. During closed session, the Legislative Body shall exclude all persons which it is authorized by State law to exclude from a closed session. No minutes of the proceedings of the Legislative Body during a closed session are required. There shall be no closed session during any special emergency meeting. Closed session may not be held regarding a matter not listed on a properly posted agenda for closed session except upon the Legislative Body first taking action to place the item on the agenda as a closed session item as permitted by law.

4.2 Persons Authorized

Persons present in the closed session shall be only those persons necessary to the discussion of the matter under consideration. All other persons shall be excused. The Clerk/Secretary shall attend each closed session of the Legislative Body and keep and enter into a minute book a record of any reportable decisions made at the meeting, unless attendance is excused.

4.3 Confidentiality

The minute book for any closed session is not a public record and shall be kept confidential and shall be available only to members of the Legislative Body or as otherwise provided by law. (Government Code § 54957.2(a).) No person attending a closed session shall publicly discuss or otherwise reveal the proceedings in the closed session unless such publication has been approved by the vote of the Legislative Body taken during the closed session or as otherwise required by law. Violation of this rule shall subject the violator to censure by the Legislative Body as provided in Section 10.5 herein.

4.4 Public Reports

Before recessing into closed session, the Presiding Officer or General Counsel shall announce that the Body is recessing into closed session and shall name each closed session topic that will be discussed in closed session in at least as much detail as shown on the agenda.

Upon leaving closed session, the Presiding Officer or General Counsel shall report publicly any reportable actions taken on a closed session matter and, if any vote was taken, shall announce that the matter was put to a vote, the results of the vote, and how each Legislative Body member voted.

ARTICLE V - AGENDA CONTENTS

5.1 Preparation of Agendas

Barring insurmountable difficulties, the agenda shall ordinarily be delivered to the members of the Legislative Body each **Friday** preceding the meeting to which it pertains. The Agenda shall also be available to the general public at the time it is delivered to the members of the Legislative Body.

Any Legislative Body member may have placed on the agenda any business that should be deliberated upon in the future by the Legislative Body. Any Legislative Body member desiring to present a subject for the Legislative Body's consideration shall advise the City Manager's office of that fact not later than **12:00 noon on the Tuesday** of the week preceding the meeting at which the member wishes the subject to be considered. The matter shall then be listed on the next agenda for discussion of whether it should be a future agenda item. The City Manager shall advise the Legislative Body member of

constraints affecting staff's ability to produce an agenda report, and when the matter should be scheduled.

Notwithstanding the foregoing, the City Manager generally has responsibility for setting the agenda for the Legislative Body (except for any Commission where the responsibility may be assigned to the City Manager's designee), and may place matters on the agenda in accordance with the Manager's evaluation of administrative priorities and resource capacities of City.

5.2 Description of Matters

All items of business to be transacted or discussed at a meeting of the Legislative Body, shall be briefly described on the agenda. The description may, but need not, set out the specific action or alternatives which will be considered by the Legislative Body, but should contain sufficient detail so that a person otherwise unaware could determine the general nature or subject matter of the item by reading the Agenda. The description of closed session matters shall meet the requirements of Government Code Sections §54954.2 and, where applicable, §54954.5. Matters may be designated as "pending" and listed for the sole purpose of determining if they will be on a future agenda.

5.3 Action Items

(a) Matters may formally be adopted by an ordinance, a resolution, minute order, or other motion (thereafter recorded by minute entry). Technically, all three are equally as legally effective and binding but vary in the formality of respective memorialization. While most actions will be presented to the Legislative Body in a written form prior to, or at, the meeting, the Legislative Body may amend any proposed action as written by carried motion of the Legislative Body at the time of its presentation for adoption. If a an action as written is so amended by the Legislative Body, it shall be revised to reflect the Body's amendments for later execution by the Presiding Officer.

(b) Besides ordinances and resolutions, action can be taken by motion and recorded as a minute order. A "minute order" denotes a Legislative Body action which is recorded simply by an item entered in the minutes of the meeting at which it was accomplished, and no separate document is made to memorialize it.

(c) As a general rule, a recorded majority of the quorum for a Legislative Body may take an action. However, for the City Council, resolutions, orders or the payment of money, and all ordinances require a recorded majority vote of the total membership of the City Council. Some actions, such as the passage of an urgency

ordinance or adoption of a resolution of necessity, require a super-majority vote. Under the Political Reform Act of 1974, a member with a financial conflict of interest regarding a matter before the member's board must leave the room while that matter is being discussed, heard, or acted on, so that member cannot be counted towards the quorum for that matter.

5.4 Resolutions

(a) A "resolution" is a formal action with findings taken by the Legislative Body, generally pre-prepared in writing, designated by sequential number, and reference to which shall be inscribed in the minutes and an approved copy of each resolution filed in the official book of resolutions of the Legislative Body. Resolutions are used when specifically required by law, when needed as a separate evidentiary document to demonstrate findings or to be transmitted to another governmental agency, or where the frequency of future reference back to its contents warrants a separate document (with the additional "whereas" explanatory material it often recites) to facilitate such future reference and research.

(b) A resolution may be adopted at the same meeting it is presented. Where a resolution has been prepared in advance, the procedure shall be: motion, second, discussion, vote pursuant to methods prescribed in Article XI, and result declared. It shall not be necessary to read a resolution in full or by title except to identify it.

(c) Where a resolution cannot reasonably be prepared in advance of a meeting, the Legislative Body may instruct the City Manager or the General Counsel to prepare a resolution for presentation at the next Legislative Body meeting. Where urgent, a resolution may be presented verbally in motion form together with instructions for written preparation for later execution. After the resolution has been verbally stated, the voting procedure in Article XI, shall be followed.

5.5 Ordinances (City Council Only)

(a) The City Council is the only Legislative Body empowered to legislate the Banning Municipal Code by adoption of ordinances.

(b) Ordinances, other than urgency ordinances, require at least two readings at different meetings held at least five days apart with the first reading considered to be introduction and the second adoption.

(c) A waiver of further readings requires a majority vote of the Council members present and voting. The waiver of further reading may be accomplished by one vote for all ordinances presented on the agenda of the present meeting. Government Code Section 36934.

(d) The Clerk/Secretary shall prepare copies of all proposed ordinances for distribution to all members of the City Council at the meeting at which the ordinance is introduced, or at such earlier time as is expedient. Ordinances shall be numbered and kept by the clerk/secretary with the same formality as resolutions as described above in Section 5.4.

(e) An urgency ordinance is an ordinance adopted for the immediate preservation of the public peace, health and safety, containing a declaration of facts constituting the urgency. An urgency ordinance takes effect immediately and requires four-fifths vote of the City Council for passage pursuant to Government Code § 36937.

5.6 Contracts and Agreements

When any contract or agreement is to be considered by the Legislative Body, the complete contract and agreement, if complete in form for execution, shall be made a part of the agenda package presented to the Legislative Body and shall be made available for viewing by the public within the time frames required under the Brown Act and/or the California Public Records Act (Government Code §§ 6250 through 6276.48). The Legislative Body may choose to leave the final form of the contract to the discretion of General Counsel if the Legislative Body has determined the general conditions of the contract.

5.7 Limitation of Actions by Agenda

No action or discussion shall be taken by the Legislative Body, on any item not appearing on a posted agenda, subject only to the exceptions listed in Section 5.9 below. "Action taken" as used herein shall mean a collective decision made by a majority of the Legislative Body, a collective commitment or promise by a majority of the Legislative Body to make a positive or a negative decision, or an actual vote by a majority of the Legislative Body upon a motion, proposal, resolution, order, or ordinance.

5.8 Public Comment Period

Pursuant to Government Code § 54954.3, every agenda posted for any meeting shall contain an item entitled "Public Comment" in order to provide for an opportunity for the public to address the Legislative Body on items of interest to the public within the Legislative Body's subject matter jurisdiction. The public comment period should be conducted in accordance with Article VII.

5.9 Exceptions to Agenda Requirement for Action Taken

The Legislative Body may take action at a meeting on an item not appearing on the agenda for that meeting only under one of the following circumstances:

(a) Upon a majority determination that an "emergency situation" that is either (i) a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, or (ii) a dire crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a Legislative Body to provide one-hour notice before holding an emergency meeting may endanger the public health, safety, or both. All discussion of such emergencies must be in open session.

(b) Upon a determination by a two-thirds (2/3) vote of the Legislative Body, or if less than two-thirds of the Legislative Body are present by a unanimous vote of those members present, that the need to take action arose subsequent to the agenda posting. For the purposes of this subsection, the term "need to take action" shall mean those circumstances whose occurrence creates a situation which is materially different from that which existed at the time the agenda was posted, and which requires the immediate attention of the Legislative Body. The mere failure of any person to notify the

Legislative Body or staff of a pre-existing situation requiring Legislative Body attention until after the time for the posting of the agenda shall not be deemed to constitute a "need to take action" hereunder. If the Legislative Body makes a determination pursuant to this subsection, the minutes of the meeting at which the determination is made shall reflect what circumstances gave rise to the "need to take action" and why the item could not be placed on the agenda.

5.10 Minutes and Recordings

(a) An account of all proceedings of Legislative Body in open meetings shall be kept by the Clerk/Secretary. The Clerk/Secretary shall prepare an abbreviated record of the meetings proceedings for approval by the Legislative Body which when adopted by the Legislative Body shall be the official Minutes of the meeting. Amendment of the minutes may be made only as to factual accuracy and not as to a change of intent. The Minutes of the meeting need not be verbatim. Only the best and most complete available recording of the meeting shall constitute the official record of the Legislative Body, but the Minutes shall constitute the official record of the Legislative Body meeting where a verbatim record of the meeting is not available.

(b) Any recording of a meeting made by or at the direction of the Legislative Body is a public record that must be retained and made available to the public for at least 30 days. The Legislative Body must provide to the public, without charge, equipment to review the record.

ARTICLE VI – ORDER OF BUSINESS

6.1 Order of Business

The order of business of each meeting shall be as contained in the agenda prepared by the Clerk/Secretary unless the majority of the Legislative Body members consent to take items out of order. The order of business at meetings of the Legislative Body may be as follows, in accordance with the procedures specified below:

- (a) Roll Call.
- (b) Announcement of Closed Session Items, if applicable.
- (c) Public Business from the floor on closed session items.
- (d) Recess.
- (e) Reconvene Regular Meeting.
- (f) Pledge of Allegiance.
- (g) Closed Session Report, if applicable.
- (h) Public Comments, Correspondence, Presentations, Appointments.
- (i) Consent Items. (See Section 6.3 below.)
- (j) Public Hearings.
- (k) Announcements and Reports.
- (l) Discussion Items.
- (m) Items for Future Agendas (Pending Matters).
- (n) Adjournment.

6.2 Call to Order

The meeting of the Legislative Body shall be called to order by the Presiding Officer, or the Vice-Chair in the Presiding Officer's absence. In the absence of both the Presiding Officer and Vice Chair, the meeting shall be called to order by the Clerk/Secretary and the three Legislative Body members present shall elect by majority vote a Presiding Officer for that meeting.

6.3 Consent Items

Matters of a routine or generally uncontested nature and non-controversial, shall be placed on the Agenda as Consent Items and may be approved by the Legislative Body in a single motion by adoption of the Consent Calendar. The approval of the Consent Calendar shall signify the approval of each matter or recommendation included therein. All matters on the Consent Calendar shall be the subject to public comment procedures in Article VII. Upon the request of any member of the Legislative Body or upon the request of a member of the public made through the Presiding Officer, a matter may be removed from the Consent Calendar for separate discussion and/or action. Any such item shall be considered as part of the Excluded Consent Calendar. Each matter proposed for consideration as part of the Consent Items, including any recommended action, shall be described on the notice and agenda posted for the meeting. The following matters are not appropriate for the Consent Calendar:

(a) Ordinances shall not be placed on the Consent Calendar for approval unless the ordinance has first been read or the reading of the ordinance has been waived as required by law.

(b) Any matter where the City Manager believes (i) it unlikely that there would be unanimous approval by the Legislative Body, or (ii) there is likely to be public comment on the matter, or (iii) a public presentation of the matter would be beneficial to the community.

6.4 Advisory Bodies (*City Council Only*)

The City Council shall have the power to establish advisory committees, commissions, other Legislative Bodies and Non-Governing Bodies. Any committee which is (i) established by ordinance, resolution or other formal action, or (ii) has a fixed regular meeting schedule, or (iii) has continuing subject matter jurisdiction over a non-temporary issue, or (iv) which continues to conduct business in excess of 180 days, or (v) has a majority membership of officials from other Legislative Bodies, shall be subject to the provisions of the Brown Act.

Advisory bodies and committees may take the following form:

(a) The Council may, as the need arises, authorize the appointment of "ad hoc" Council committees composed of two members. Except where otherwise specifically provided by law, the Presiding Officer shall appoint the members of the Council committees, subject to the approval of the Council. Any committee so created

shall cease to exist upon the accomplishment of the special purpose for which it was created or when abolished by a majority vote of the Council.

(b) The Council may, subject to the Brown Act, create other committees, boards, and commissions, whether Legislative Bodies or Non-Governing Bodies, to assist in the conduct and operation of the City government with such jurisdiction and duties as the Council may specify. The Presiding Officer shall make appointments of members to such committees, boards or commissions subject to the approval of the Council. The procedure of filling vacancies and provision of notice thereof shall be subject to the provisions of the Maddy Act (Government Code §§ 54970-54974). Absent any other provision to the contrary, members of committees, boards and commissions may be removed by the Council without cause by a majority vote of the whole body. Any member of the City Council may place the question of removal on the agenda. Any committees, boards, or commissions so created may be abolished by a majority vote of the Council by repeal of the enacting ordinance or resolution.

(c) Sub-Legislative Bodies, including Non-Governing Bodies, shall be responsible for reporting the Body's activities to the City Council. The members of a Sub-Legislative Body or Non-Governing Body shall operate within the jurisdiction established by the Council and shall not have authority to make subcommittees unless specifically granted such authority by action of the full City Council. Staff members may be assigned to assist any Council-created committee by the City Manager; staff members so assigned shall not be members of the committee unless specifically appointed as such by action of the full Council.

6.5 Budgets

The City Council shall have the power to approve the City budget, and each Legislative Body shall have the power to approve the budget of funds specifically apportioned to control of that Legislative Body (e.g., the Successor Agency Board shall approve the budget of the Agency and the Housing Authority Board shall approve the budget of the Authority). Approval of the budget constitutes approval of a proposed plan of expenditures and revenues. It does not constitute an authorization for expenditures. With respect to any given expenditure the applicable procedure shall be followed. Further adoption of the budget does not constitute authorization for any specific employment class or position.

6.6 Items from Members

(a) There is a specific item on the agenda for receiving general comments, announcements, and/or suggestions from members of the Legislative Body. This can be used to inform the public concerning upcoming events, report on members' attendance at conferences and seminars, for requests by members that staff look into specific matters or similar matters. These matters may not be discussed, opined upon or deliberated, and if they do not concern a matter on the agenda, shall be handled by the Presiding Officer according to the same procedures set out for Public Comment in

Section 7.3. No action may be taken on such matters without being placed on a subsequent agenda.

(b) There is an agenda item referred to as pending matters. Matters are listed under this item pursuant to Section 5.1 where a member has asked that the matter be scheduled for discussion of whether a future staff report should be prepared. The listing of the matter allows a discussion of whether a staff report should be prepared, or it may be held on the pending agenda to keep track of when it will be assigned to a future agenda.

(c) There is an agenda item referred to as Reports from City Manager. This may be used by the City Manager similarly to the item for members of the Legislative Body in Subsection (a) above to make announcements without separately listing the matter on the agenda, and subject to the same restriction that there may be no discussion or action on such matter.

ARTICLE VII- PUBLIC COMMENT

7.1 Initial Public Comment

At the beginning of any Legislative Body meeting the public shall be afforded the right to comment on any and all issues (not on the agenda) within the subject matter jurisdiction of the Legislative Body. Such general public comment on non-agendized issues shall be taken at the beginning of the meeting under a "General Public Comment" heading. With regard to matters not on the agenda, the Legislative Body may ask questions of persons who raise new matters during the General Public Comment period or otherwise, and the Presiding Officer should handle such matters as provided in Section 7.3, below. However, all Legislative Body questions must be limited to facts-only informational inquiries, and the Legislative Body may not discuss the merits, express any opinions or ask questions that convey opinions or thought processes with respect to any non-agendized issue.

The public shall also be afforded the right to comment on every item appearing on the agenda prior to the Legislative Body's consideration of that item, as provided in Section 7.4 below.

7.2 Time Limitations

Generally the time limit to speak for public comments is 3 minutes, but 5 minutes during a noticed public hearing, provided that these limits do not apply to a project applicant speaking at a public hearing pursuant to Article VIII. All such time limits shall be noticed on the agenda for the meeting. Notwithstanding these time limits, the Presiding Officer has the full prerogative to maintain meeting order and decorum as provided in Section 9.1 and Article X generally.

7.3 Speaker Cards and Procedures

(a) Any member of the public desiring to address the Legislative Body must stand at the podium and wait to be recognized by the Presiding Officer. Upon being recognized, each speaker must identify the subject or subjects (whether agenized or not) upon which she or he intends to speak, and may state his or her name and address, but shall not be required to give any other information as a condition of speaking. All remarks and questions shall be addressed to the Presiding Officer and not to any individual Legislative Body member, staff member or other person.

(b) The Legislative Body may, upon notice appearing on the agenda and proper preparation being made therefore, require each speaker to complete a card requesting to speak before the Legislative Body on which shall be indicated, at a minimum, the name of the speaker and the item on which they wish to be heard. Failure to complete such a card prior to commencement of the hearing of the item shall not constitute grounds on which to deny a speaker the right to be heard.

(c) At the close of the speaker's comments, or the close of the period for public comment the Presiding Officer may ask staff to respond to the speaker's comments. Thereafter, the Presiding Officer may refer the matter to staff for investigation and/or response; or request that the matter be placed on an agenda for a subsequent meeting for action by the Legislative Body.

7.4 Additional Procedures for Public Comment on Agenda Items

(a) Members of the public shall have the opportunity to address the Legislative Body on each and every item listed on the agenda. Public comment on agenda items must be heard prior to the Legislative Body's consideration/discussion of the item. Public comments on an agenda item may be heard either in combination with the General Public Comment period at the start of the meeting, or at the time the Legislative Body opens the item, or both.

(b) The purpose of the public comment period is to receive input from the public, not to create a debate between the Members and the public. Members should generally refrain from debating members of the public during the period for public comment, but if Members desire to clarify comments by members of the public, they may ask factual questions, and if necessary, should do so during the public comment period.

(c) The Presiding Officer should clearly open and close the public comment period. After the close of the public comment period or after a motion has been made, no member of the public shall address the Legislative Body without first securing permission of the Presiding Officer.

ARTICLE VIII– NOTICED PUBLIC HEARINGS

8.1 Public Hearings; Notice; Fairness

(a) Matters noticed to be heard by the Legislative Body shall commence at the time specified in the notice of hearing, or as soon thereafter as is reasonably possible, and shall continue until the same has been completed or until other disposition of the matter has been made.

(b) Legislative Body members shall not overtly or implicitly promise a particular action by City staff or by any Legislative Body. Where a Legislative Body member is contacted about an issue that will be presented to any Legislative Body of the City, it is appropriate to give a brief overview of City policy, to refer to City staff for further information, or to suggest that the concern be brought to the whole Council at the hearing or Council meeting, as appropriate.

(c) All public hearing notices shall be issued and published in compliance with any statutory notice requirements applicable to the particular hearing at issue and such notice shall inform interested persons of the Statute of Limitations to challenge the validity of any action taken by the Legislative Body on such matter.

(d) In all matters before a Legislative Body, whether public hearing or otherwise, the Body must judge the matter fairly and without personal bias. Although every Legislative Body member has a right to their own personal opinions, Legislative Body members should by their demeanor show an ability to listen to a variety of viewpoints and demonstrate a reasonable willingness to consider all sides of an issue before them. For quasi adjudicative matters involving public hearings, the members of the Legislative Body shall not prejudice the matter prior to the public hearing, shall be fair and impartial, and shall decide the matter based upon the evidence and the statutorily required findings.

(e) For such matters, Legislative Body members should avoid expressing an opinion or divulging their thought process until after the public hearing has been completed.

8.2 Continuance of Hearings

(a) Any hearing being held or noticed or ordered to be held by the Legislative Body may, by order or, notice of continuance, be continued or re-continued to any subsequent meeting in the manner provided for adjourned meetings.

(b) When it is the decision of the Legislative Body to continue an item which appears on the agenda, prior to hearing any report, testimony or taking evidence on the item, the Legislative Body may make such intent known at the beginning of the meeting. At that time the public shall be offered the opportunity to speak regarding the intent to continue the item. At the time regularly scheduled for the hearing of the item, the Legislative Body shall then take action to continue the item after again informing the

public of the intent to continue the matter. No testimony or evidence shall be taken at that time unless the speaker will not be available at the continued hearing date.

(c) When the Legislative Body has continued the public hearing on an item after its commencement, persons testifying at the first public hearing shall be permitted to again address the Legislative Body on the item at the renewed hearing subject to the finding of the Presiding Officer that the testimony is redundant. Upon such finding the time allotted for testimony by the individual may be summarily reduced.

(d) Continuances of a public hearing to a date certain need not be re-noticed unless the hearing has been continued three or more times and the Legislative Body believes confusion may be created as to the time of the hearing.

8.3 Conduct of Hearings

(a) When a matter for public hearing comes before the Legislative Body, the Presiding Officer shall request that staff present the staff report and any other relevant evidence, but the presentation of the staff report prior to the formal opening of the public hearing shall not prevent its consideration as evidence. Any such evidence shall be made a part of the record of the public hearing. The Presiding Officer shall permit members of the Legislative Body to ask questions of staff, but should prevent expressions of opinion by members of the Legislative Body before the conduct of the hearing.

(b) The Presiding Officer shall thereafter open the public hearing and inquire if there are any persons present who desire to address the Legislative Body on the matter. Any person desiring to speak or present evidence upon being recognized, may speak or present evidence relevant to the matter being heard. Generally the Presiding Officer should allow speakers in favor of projects, then those opposed, and then rebuttal. Any testimony shall be truthful.

(c) Members of the Legislative Body who wish to ask questions of the speakers, during the public hearing portion, may do so but should be mindful that the purpose of the public hearing is to obtain testimony and evidence from the speakers, and not to debate the merits of the matter with speakers. Members should avoid debate and expressions of personal opinion until after the close of the public hearing. Unlike public comment periods, generally there should be no response to speaker comments until after the close of the hearing. The Presiding Officer shall conduct the hearing in such a manner as to afford due process to all affected persons.

(d) All persons interested in the matter being heard by the Legislative Body shall be entitled to submit written evidence or remarks, as well as other graphic evidence. All such evidence presented shall be retained by the Clerk/Secretary as part of the record. Each speaker may only speak once during the public hearing unless the Legislative Body requests additional clarification later in the process.

(e) Upon closing of the public hearing by the Presiding Officer, no additional public testimony shall be solicited or received by the Legislative Body without

reopening the public hearing. If, however, the Legislative Body receives relevant new evidence after the close of the public hearing and such new evidence may impact the Legislative Body motion or vote, the Legislative Body may re-open the public hearing to obtain public comments upon such new evidence.

(f) The Presiding Officer has the prerogative to require group spokesmen to allow speakers to give time to others, to cut off speakers who are unduly repetitious, and to permit the extension of time to speakers, provided that (i) speakers are treated fairly and informally, and that (ii) any such special rules are announced in advance of their application.

8.4 Extra-Meeting Contacts on Matters Set for Public Hearing

(a) Legislative Body members should minimize their contacts with developers, applicants, or other persons who will be the subject of a quasi-adjudicative public hearing matter to be heard before the Legislative Body. Legislative Body members should avoid extra-meeting contacts with persons who will be the subject of a public hearing before the Body or with advocacy groups.

(b) If a Legislative Body member is contacted directly by such person outside the meeting setting, the member shall refrain from expressing any viewpoints or thought processes to the person until after the public hearing. The Legislative Body member may explain that they are unable to express any viewpoint on the matter until all evidence has been heard in the course of a public hearing and should encourage any such person to present their position in writing or orally at the public hearing.

(c) At the commencement of the public hearing, the Legislative Body member must disclose publicly any extra-meeting contacts or discussions had which may be relevant to the decision.

(d) The limitations set forth in this Section shall not be read as preventing a Legislative Body member from inspecting a site that will be relevant to a public hearing, although such sight inspection should be disclosed on the record at the beginning of the public hearing.

ARTICLE IX - OFFICERS

9.1 Presiding Officer

(a) The meeting shall be presided over and chaired by the Presiding Officer, or, in the Presiding Officer's absence, the Vice Chair. The Presiding Officer shall have the authority to rule any speaker out of order, including speakers during the public comment period if the subject raised is not within the subject matter jurisdiction of the Legislative Body, or during a public hearing if the speaker is not presenting testimony or evidence relevant to the matter which is the subject of the public hearing. The Presiding Officer shall have the responsibility for the conduct of meetings in an orderly manner and to prevent the obstruction of business, and in carrying out this responsibility shall have the authority to give the floor to any member of the Legislative Body or public

by recognizing them, to prevent the misuse of legitimate forms of motions or privileges, to take matters up out of order, to caution speakers as to disruptive behavior, and to order any persons willfully interrupting the meeting to be removed from the room, including as provided in Article X.

(b) The Vice Chair shall generally take the place of the Presiding Officer in the absence of the Presiding Officer. In the absence of the Vice Chair, the Presiding Officer may call any other member to take his or her place as Presiding Officer; such substitution not to continue beyond adjournment.

(c) Any determination made by the Presiding Officer may be appealed by the making of a Motion to Appeal the Ruling by any other member of the Legislative Body. The Presiding Officer's determination will stand unless a majority of the Legislative Body members vote in favor of the Motion to Appeal the Ruling, in which case the ruling of the Presiding Officer will be overridden. The Motion to Appeal the Ruling is governed by the Chart of Motions attached as Exhibit A.

9.2 Representation of Legislative Body

(a) The Mayor is the designated representative of the City and the City Council for purposes of presenting and expressing the official City position on an issue. If individual members of the Council or other Legislative Bodies are contacted by the media for a statement of official City position, the member should refer such inquiries to the Mayor. Otherwise public or media statements by a Legislative Body member should be clearly characterized as comments upon a personal viewpoint.

(b) Members of the City Council may use official City letterhead to correspond with other public officials and with consultants but any such correspondence shall state that the views expressed therein are personal and not the position of the City unless the City Council has officially adopted such position. No commission or Sub-Legislative Body may take a position officially representing the City unless authorized to do so by the City Council.

9.3 Email Policy

(a) Members of the Legislative Body are provided with City email accounts which may be utilized for the conduct of City business, including communications with constituents. Members should be aware that all such communications may be subject to the Public Records Act (Gov't Code Section 6200). Use of private email accounts for City business may also make them subject to disclosure.

(b) Members of the Legislative Body are subject to the Brown Act in the use of email. Email communications may not be used to develop a collective consensus or decision on any matter. Email communications to the entire Body should be avoided but may be permitted to provide factual information, for example such as arranging an event, where no discussion or exchange of opinions on a matter within the jurisdiction of the Legislative Body is initiated or occurs.

9.4 Clerk/Secretary

The Clerk/Secretary or his/her deputy shall attend all meetings of the Legislative Body unless excused, and shall keep the official minutes and perform such other duties as may be requested by the Legislative Body.

9.5 City Manager

The City Manager, or designee, shall attend all meetings of the Legislative Body unless excused. The City Manager may make recommendations to the Legislative Body and shall have the right to take part in all discussions of the Legislative Body, but shall have no vote. The City Manager, shall provide the Legislative Body with a staff report providing sufficient information to be the basis for any action by the Legislative Body at its meeting. Any officer or employee of the City, when directed by the City Manager, shall attend any meeting of the Legislative Body and may present information relating to matters before the Legislative Body.

9.6 General Counsel

(a) The General Counsel, or deputy, shall attend all meetings of the City Council unless excused and shall upon request of any member give an opinion, either written or oral, on questions of law. The General Counsel, or deputy, shall attend all meetings of such other Legislative Bodies as directed by the City Council or City Manager. The General Counsel serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Presiding Officer, subject to the appeal of the full Legislative Body pursuant to Section 3 of Article XI, below. All ordinances and resolutions and all contracts, deeds, easements or other legal instruments shall be approved as to form and legality by the General Counsel. General Counsel shall not have an attorney-client relationship with individual members of any Legislative Body. In any case of ambiguity or uncertainty in the interpretation or application of this Manual to any procedure, the Presiding Officer may direct such question to the General Counsel for a ruling.

(b) Any member of the Legislative Body may request from the General Counsel a legal opinion regarding any matter related to the interests of the City. Where a legal opinion involves substantial cost, the request for the opinion must first be approved by the City Manager or by a majority of the Legislative Body. The General Counsel is the legal representative of the City acting through its Legislative Body. There is a continuing legal question as to whether the General Counsel may have an attorney-client relationship with any individual member of the Legislative Body or the City staff. As a consequence any discussion with the General Counsel which leads to the conclusion that the interests of the City are at risk must be revealed to all relevant members of the Legislative Body and the City staff by the General Counsel. The General Counsel shall not have an attorney-client relationship with individual councilmembers. The General Counsel is required to maintain the confidentiality of such communications from persons outside the City to the extent required or permitted by law and the code of ethics.

(c) The General Counsel has no statutory duty or authority under the Political Reform Act to provide Political Reform Act advice to any Legislative Body member but should provide advice to members when requested. However, a Legislative Body member may not rely on advice from the General Counsel to provide him or her with immunity from FPPC enforcement or prosecution. Such immunity may be obtained only through a written advice letter obtained from the FPPC, on the question in issue, by the Legislative Body member. A Legislative Body member enjoys no privilege of attorney/client confidentiality in reviewing these matters with the General Counsel. Any advice given to an individual member of a Legislative Body cannot be withheld from the rest of the City or Legislative Body. If, after receipt of an opinion of the General Counsel, the Legislative Body member wishes to participate in the decision making process with immunity from prosecution or enforcement, the General Counsel shall assist the Legislative Body member in making direct contact with the FPPC for informal or formal advice upon which the Legislative Body member can rely.

(d) *[City Council Only]*. It often happens that other jurisdictions or the League of California Cities or other regional or statewide association will ask the City to participate in the filing of a letter or brief before a court in a matter deemed to be of concern to all or a great many cities. These "friend of the court" or "amicus" briefs have the effect of informing the court how widespread will be its opinion and how that opinion will affect cities. Such participation is normally without direct cost to the City.

i) Upon receipt of the request, the General Counsel shall make the request available through the City Manager to the Council. Upon a determination by any Council member that there is an interest in participating in the action in the manner proposed, the Council member shall inform the City Manager or General Counsel who shall place the matter as an item for discussion in closed session on the agenda of the next Legislative Body meeting. The General Counsel may otherwise place an amicus request on the agenda on his or her initiative.

ii) In lieu of the foregoing process, where there is urgency to the matter, General Counsel is authorized to undertake the filing of the letter or brief where (i) in the opinion of General Counsel the legal matter significantly affects the interests of the City, (ii) the General Counsel has consulted with and received the approval of the City Manager, (iii) the cost to the City will not exceed \$5000, and (iv) the General Counsel makes a written report of the action to the Legislative Body.

9.7 Conflicts of Interest

All Legislative Body members are subject to the provisions of California Law, such as Chapter 1, Title 9, of the California Government Code, relative to conflicts of interest, and to conflicts of interest codes adopted by the Legislative Body. Any Legislative Body member prevented from voting because of a conflict of interest shall refrain from in any way participating in the matter giving rise to the conflict. Where abstention from a matter is made on the basis of a conflict of interest arising from a financial interest in the decision, the Legislative Body member shall announce their abstention from the matter when it is first opened, and then shall set forth the reason for

the abstention with the degree of specificity at least equal to the disclosure of the Legislative Body member's financial interests on the Legislative Body member's annual statement of financial interests; immediately after such announcements, the Legislative Body member shall leave the room. The Legislative Body member shall not overhear the staff report, participate in the discussion or deliberations and shall not otherwise make or participate in making the decision or in any way attempt to use his or her official position to influence the decision. This shall not prevent the conflicted Legislative Body member from coming before the Legislative Body solely during the public comment period as an affected citizen to state his/her opinion on how the matter impacts their disqualifying interests.

9.8 Abstentions Generally

Members of the Legislative Body are discouraged from abstaining from a vote for reasons other than a legally-disqualifying, financial conflicts of interest. However, if a member chooses to abstain from voting as a result of what he/she perceives as a personal or non-financial conflict of interest, the member may do so after stating for the record the nature of the perceived conflict. In the event of such a perceived conflict (as opposed to a legally-disqualifying conflict), the member is not required to leave the dais.

9.9 No Financial Interest in Contracts

A member of a Legislative Body shall not have a financial interest in a contract within the meaning of (Government Code §1090 *et seq.*) made in their official capacity and such contract shall be null and void whether the member participates in the making of the contract or not.

9.10 Ethical Standards

A member of a Legislative Body shall maintain the highest ethical standards and shall adhere to all laws and the ordinances and regulations of the City in carrying out their duties.

ARTICLE X- DECORUM AND ORDER

10.1 Decorum and Order – Legislative Body Members

(a) Any member of the Legislative Body wishing to speak, or any member of the public wishing to address the Legislative Body must first obtain the floor by being recognized by the Presiding Officer. The Presiding Officer must recognize any member of the Legislative Body who seeks the floor when appropriately entitled to address the Legislative Body. The Legislative Body member shall confine himself or herself to the question under debate.

(b) Any member of the Legislative Body, including the Presiding Officer, may bring a matter of business properly before the Legislative Body for decision by making a motion. Any Legislative Body member, including the Presiding Officer,

except the Legislative Body member making the motion, may second a motion. Once a motion is seconded, it may be opened for discussion and debate.

(c) The Presiding Officer shall determine all points of order, subject to the right of any member to appeal to the majority Legislative Body.

(d) A Legislative Body member, once recognized, shall not be interrupted while speaking unless called to order by the Presiding Officer, unless a Point of Order is raised by another Legislative Body member, or unless the speaker chooses to yield to questions from another Legislative Body member.

(e) Any Legislative Body member called to order while speaking shall cease speaking immediately until the question of order is determined. If ruled to be in order, the member shall be permitted to proceed. If ruled to be not in order, the member shall comply with ruling of the Presiding Officer.

(f) Legislative Body members shall accord the utmost courtesy to each other, to City or Legislative Body employees, and to the public appearing before the Legislative Body and shall refrain at all times from rude and derogatory remarks, reflections as to integrity, abusive comments and statements as to motives and personalities.

(g) Any Legislative Body member may move to require the Presiding Officer to enforce the rules and the affirmative vote of a majority of the Legislative Body shall require the member to so act.

(h) The members of the Legislative Body shall not engage in communications between themselves during the Legislative Body meeting (including breaks) regarding matters being considered on the agenda unless and until the Legislative Body has opened that agenda item. In order to minimize exposure to a Brown Act violation, Legislative Body members are discouraged from discussing any City business during breaks or before and after meetings; City business may only be discussed by a quorum of Legislative Body members when it is opened as a duly-noticed agenda item.

(i) The members of the Legislative Body shall always be attentive and show respect to those addressing the Legislative Body provided that nothing shall prevent the enforcement of the rules of decorum herein.

(j) No Legislative Body member attending a meeting of another City commission or committee shall make any statement or, give the appearance or indicate in any way that they are representing the Legislative Body unless they have been authorized to do so by the Legislative Body. When making a comment at such a meeting, the Legislative Body member should make it clear that they are speaking solely as an individual. Unless officially appointed to participate on a committee, Legislative Body members should make an effort not to insert themselves into or take positions on matters which will ultimately be decided upon by the Legislative Body.

(k) The Legislative Body may punish its own members for misconduct pursuant to Section 10.5.

10.2 Decorum and Order – Employees

(a) Members of administrative staff and employees of the Legislative Body shall observe the same rules of procedure and decorum applicable to Legislative Body members. The City Manager shall ensure that all staff and employees observe such decorum. Any staff members, including the City Manager, desiring to address the Legislative Body or members of the public shall first be recognized by the Presiding Officer. All remarks shall be addressed to the Presiding Officer and not to anyone individual Legislative Body member or member of the public.

(b) Questions of City staff and/or requests for follow-up or additional background information should be directed only to the City Manager, General Counsel, Assistant City Manager, or Department Heads. The Office of the City Manager should be copied on any request, except those to the General Counsel. When in doubt about what staff contact is appropriate, Legislative Body members should ask the City Manager for direction. Materials supplied to a Legislative Body member in response to a request will be made available to all members of the Legislative Body so that all have equal access to information.

(c) Legislative Body members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

10.3 Decorum and Order – Public

(a) Members of the public attending Legislative Body meetings shall observe the same rules of order and decorum applicable to the Legislative Body. All remarks and questions should be addressed to the Presiding Officer and not to any individual Legislative Body member, staff member or other person.

(b) Any person conducting their public remarks or behavior before the Legislative Body in such a way as to actually cause disruption to the conduct of the meeting may be removed from the room by the sergeant-at-arms as directed by the Presiding Officer. Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar disruptive demonstrations shall not be permitted by the Presiding Officer, who may direct the sergeant-at-arms to remove such offenders from the room or call a recess of the meeting. Aggravated cases may be prosecuted on appropriate complaint signed by the Presiding Officer.

(c) Members of the public shall be allowed to video or audio record a public meeting unless such recording becomes an actual and unreasonable disruption to the Legislative Body's ability to carry-out the meeting.

10.4 Enforcement of Decorum

(a) The Banning Police Chief or designee shall be ex-officio sergeant-at-arms of the Legislative Body. He shall carry out all orders and instructions given him by the Presiding Officer for the purpose of maintaining order and decorum in the Legislative Body meeting. Upon instructions from the Presiding Officer, it shall be the duty of the sergeant-at-arms to eject any unruly person from the Legislative Body meeting chamber or place him or her under arrest or both for conduct actually disrupting to the Legislative Body proceedings. Such person may be barred from further participation in the meeting.

(b) As set forth in Government Code § 54957.9, in the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the Legislative Body members may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this Section. Nothing in this Section shall prohibit the Legislative Body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

10.5 Censure of Legislative Body Members

(a) It shall be a violation of this section for any sitting member of a Legislative Body to violate any general law or regulation, and any, rule, law, ordinance or resolution of the City of Banning. It shall also be a violation of this section for any sitting member of a Legislative Body to violate an administrative policy of the City which has been adopted following a vote of the Legislative Body or the City Council on the matter and which by its terms is expressly made applicable to the Legislative Body.

(b) Any violation of the foregoing paragraph by a Legislative Body member may be punished through the administration of a public censure of the member by the member's Legislative Body. Such censure may be in addition to any other punishment applicable to the violation. For purposes of this section, "censure" shall mean the adoption of a motion setting forth a statement of disapproval of a Legislative Body member's conduct.

(c) When evaluating a request for defense or indemnification made by the censured member in litigation arising from the censured conduct, the record of the censure shall be considered by the Legislative Body. Such record shall not be determinative. Failure of the Legislative Body to censure the conduct of a member does not constitute waiver of the Body's right to refuse to indemnify or defend the member in an action.

(d) A Legislative Body member may not be made the subject of a motion for censure without first being given notice of the violation and an opportunity to

correct the violation, if it can reasonably be corrected. Upon a continued violation or failure to correct, the violating member shall be given notice and an opportunity to be heard as follows:

- (i) Only a sitting member of the Legislative Body whose member commits the violation may initiate proceedings for the censure of one of its members.
- (ii) Proceedings shall be commenced by the presentation of a written statement of charges to the subject Legislative Body member with a copy delivered concurrently to the Clerk/Secretary by the member initiating the charge. Initiation shall not require the prior approval of the Legislative Body. The statement of charges shall be given at least ten days prior to the meeting at which the censure motion is proposed to be brought. The notice shall contain, at a minimum, the designation of the specific rule, law regulation, etc. which the member is claimed to have violated and a statement of the date, place and time at which the violation occurred. The statement shall further contain a description of the conduct of the member which is alleged to constitute the violation.
- (iii) The statement of charges shall be delivered to all other Legislative Body persons and made a part of the public record at the meeting next occurring after date of its delivery.

(e) The motion for censure shall be agendized and considered at the first regular meeting occurring 10 days following the delivery of the statement of charges to the member and Clerk/Secretary. The hearing may not be continued except upon the absence from the meeting of a member of the Legislative Body other than the member bringing the charge or the member who is the subject of the charge.

- (i) The hearing shall be conducted in an open session by the Presiding Officer unless the Presiding Officer is a party to the action, in which case the Vice Chair or some other member shall conduct the proceedings.
- (ii) The hearing shall generally proceed by a reading of the charges by the charging member. The charging member may present witnesses; the charged member may answer in rebuttal; members of the public may speak in favor or opposed to the charge; and the remaining members may speak to the charges in that order.
- (iii) Passage of the motion for censure shall require a majority vote of the members of the Legislative Body. The voting members shall not go into closed session for deliberation.

(f) If the motion for censure does not pass the proceedings shall be at an end. A new motion for censure on the same grounds of violation may not thereafter be commenced against the same Legislative Body member for a period of 1 calendar year from date of the vote. However, new proceedings may be commenced on the same charges within the 1 year period on the vote of 4 members of the Legislative Body.

(g) If the motion for censure does pass, such motion shall become a part of the public record a copy of which shall be made available upon demand to any member of the public and notice of same shall be placed in the administrative file of the Legislative Body member.

10.6 Persons Authorized To Be Within Platform/Dais

No person except Legislative Body officials or authorized Legislative Body staff shall be permitted behind the Legislative Body dais without permission or consent of the Presiding Officer.

10.7 Personal Privilege

If a Legislative Body member is personally offended by the remarks of another member, the offended Legislative Body member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The Presiding Officer will maintain control of this discussion. The right of a member to address the Legislative Body on a question of personal privilege shall be limited to cases in which his integrity, character, or motives are assailed, questioned or impugned.

ARTICLE XI – PARLIMENTARY PROCUEDRES

11.1 Procedures In Absence Of Rules

(a) Unless otherwise specified in this Manual or by ordinance or resolution, meetings of the Legislative Body shall be conducted in accordance with the most recently revised edition of Robert's Rules of Order. In the event of any conflict between Robert's Rules and this Manual, the provisions of this Manual shall govern.

(b) Any provision of these rules not governed by the Government Code may be temporarily suspended by a two-thirds vote of all members of the Legislative Body. Such suspension may be moved at any time by a member. The vote on any such suspension shall be taken by yeas or nays and entered upon the record.

(c) Motions, motion procedures and precedence of motions shall be conducted in accordance with Exhibit "A" hereto.

11.2 Voting

(a) After a full opportunity for debate if it appears that there is a consensus of opinion among the members of the Legislative Body on the matter to be

voted upon, the Presiding Officer may state the consensus of the Legislative Body and ask if there is any objection. If there is no objection, the consensus as so stated shall become the order of the Legislative Body. The Presiding Officer may also determine that a consensus exists following a call for a vote by any member of the Legislative Body by a Motion to Call the Question.

(b) Except as in Subsection (a) above, otherwise, all votes of the Legislative Body shall be taken by electronic vote. In the event the electronic voting machine is not functioning or otherwise unavailable, vote shall be by roll call vote. The order voting shall be alphabetical with the Presiding Officer voting last. The Clerk/Secretary shall call the names of all members seated when a roll call vote is ordered or required. Members shall respond 'aye', 'no' or 'abstain.' After every vote the Legislative Body shall declare the result and, on all but consensus votes, shall note for the record the number of votes for or against the question. The ayes and noes shall be taken upon the passage of all ordinances and resolutions and entered upon the official record of the Legislative Body.

11.3 Votes Needed

(a) Usually, in the absence of a contrary statutory provision (such as urgency measures), a majority of a quorum which constitutes a simple majority of the Legislative Body may act for that body. However, resolutions, orders for the payment of money, and all ordinances require a recorded majority vote of the total membership of a Legislative Body.

(b) State law may dictate certain instances in which the number of votes required is greater than a majority of all Legislative Body members. As a matter of convenience, questions on which the voting requirement is varied by the State statutes and these rules, include, without limitation, the following:

- (i) Levying Taxes - Ordinances providing for the Assessment and collection of taxes require the approval of two-thirds of the members of the whole Council.
- (ii) Assessment - Assessments require a two-thirds vote of the whole Council.
- (iii) Bonds and Certificates of Participation - Authorizing these financial instruments the issuing requires a two-thirds vote of the total Council.
- (iv) Eminent Domain - The exercise of Eminent Domain requires a two-thirds vote of the total Council.
- (v) Certain Parliamentary Motions – Motions requiring a supermajority vote are noted in the Motions Chart attached hereto.

(c) Any official with a conflict of interest is not counted for purposes of establishing a quorum, and must not vote on, make, participate in any way in, or attempt to influence the decision. A Legislative Body member abstaining on any other grounds than a conflict under the Political Reform Act shall be counted as present for purposes of a quorum and such abstentions are counted with the majority. The Legislative Body member who leaves the dais solely to avoid participating in a specific item shall, in absence of a conflict, be counted as if they were present but abstaining and such abstentions are also counted with the majority.

11.4 Reconsider

Any Legislative Body member who voted with the majority may move to reconsider any action at the same meeting or, within sixty (60) calendar days, request in writing to the Clerk/Secretary that it be agendized for consideration at the following meeting, provided that reconsideration shall not be permitted where a party other than the City has acted in reliance on the Legislative Body's action and would be substantially prejudiced by such reconsideration. In the event that the subject of the reconsideration is a motion that failed as the result of a tie vote, any Legislative Body member who voted against the earlier motion may move for reconsideration at the following meeting. The member seeking reconsideration must have the matter agendized unless the motion will be made at the same meeting where the original action was taken. If the motion to reconsider passes, then the original item may be reconsidered at that time or agendized for the next meeting which meets any applicable noticing requirements. After a motion for reconsideration has once been acted upon, no other motion for reconsideration thereof shall be made without unanimous consent of the Legislative Body.

11.5 Tie Votes

Tie Votes shall be lost motions unless an additional Motion is made which obtains a majority vote to break the tie. When all Legislative Body members are present, a tie vote on whether to grant an appeal from official action shall be considered a denial of such appeal. If a tie vote results at a time when less than all members of the Legislative Body are present, the matter shall automatically be continued to the agenda of the next regular meeting of the Legislative Body, unless otherwise ordered by the Legislative Body. Notwithstanding the above, if a tie vote results at a time when one or more Legislative Body member(s) are abstaining for reasons other than conflict of interest then, in that instance, the abstention vote shall be counted in favor of the motion thereby breaking the tie vote.

11.6 Abstentions

(a) A Legislative Body shall generally express their positions on all matters except those where they are required to abstain due to legally recognized conflict of interest.

(b) A Legislative Body member who has appealed the action of any person or body of the City on a matter which does not constitute a conflict of interest for

the member under any law, shall not be required to abstain from participation in the hearing on the appeal, unless such member is unable to remain neutral, or as may be otherwise advised by the General Counsel.

(c) A Legislative Body member may abstain from action on a matter where in the member's opinion, there might be a public perception that participation in the discussion or decision would be inappropriate even though the member has no disqualifying financial interest within the meaning of FPPC rules and regulations.

11.7 Votes Of Members Previously Absent

(a) A Legislative Body member who was not present at a meeting should generally not vote on the approval of minutes for that meeting, but the voting on such minutes shall have no effect on the validity of the minutes.

(b) A Legislative Body member may vote on a continued item after an absence from the earlier public hearing of the matter if, prior to the vote, the member affirms on the record that they have familiarized themselves with the record of the earlier meeting and are prepared to vote on the issue. If the member shall abstain from the vote, the member shall be counted towards the quorum on the issue and the abstention shall be counted with the vote of the majority of the quorum.

(c) The forgoing shall not apply to the matter of a vote on the minutes of a meeting at which the member was not in attendance. In that instance, the member abstaining on the grounds of non-attendance at the meeting to which the minutes pertain shall not be counted towards the quorum on the issue and the abstention shall not be counted with the votes of the majority of the quorum.

11.8 Appeals

Except where otherwise provided, a member of the Legislative Body shall be deemed an interested person in any matter by a subordinate body and shall have standing to appeal to the Legislative Body any decision by a Sub-Legislative Body, or any determination made by any official of City by filing a written appeal. The appeal shall not state any grounds for the appeal and the resulting hearing shall be *de novo*. The appeal must be filed within 10 days of the making of the decision being appealed and shall be filed with the Clerk/Secretary who shall give written notice to the applicant, and provide written notice to other persons as required for the original action. The hearing shall be held at the first regular meeting of the Council for which notice can be legally given. No appeal fee shall be required to be paid for such appeals.

11.9 Findings and Decisions

Decisions of a Legislative Body, when acting as a quasi adjudicative body (public hearings) should be framed in terms of "findings" of fact, potentially relevant conclusions of law, and ultimate decisions showing the basis for the decision and the nexus between the findings, the conclusions and the decision. The Legislative Body members must

consider any legally-mandated findings applicable to a matter and consider the evidence presented to them in light of such findings in making their decisions.

ARTICLE XII- PROCEDURES FOR CONSIDERATION OF DEMANDS FOR CORRECTIVE ACTION

12.1 Requirement of Written Demand

Prior to any person commencing a judicial action for injunction or mandamus to declare any action taken by the Legislative Body void because of failure to observe Brown Act requirements, such person must first serve upon the Clerk/Secretary a written demand clearly describing the challenged action, the nature of the claimed violation, and the corrective action sought. Such demand must be served upon the Clerk/Secretary within ninety (90) days of the alleged violation or thirty (30) days if the action was taken in open session but in violation of § 54952.2 of the Government Code. Failure to serve any such demand within this thirty (30) day period shall result in the loss of any right to challenge any action alleged to have been taken in violation of §§ 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 of the Government Code.

If the written demand is timely served, the Legislative Body has up to thirty (30) days to cure and correct its action. If the Legislative Body does not act, any lawsuit must be filed within the next fifteen (15) days.

12.2 Consideration of Corrective Action

Upon receipt of such a demand, consideration of the demand shall immediately be placed on the agenda for the next meeting of the Legislative Body. If the demand is received less than 72 hours prior to the time set for the next meeting, the Legislative Body may determine that the notice constitutes the initiation of litigation, and that the need to take action on the threatened litigation arose subsequent to the posting of the agenda, and may consider it at that meeting pursuant to Article VI Section 9, above. A description of any item so placed on the agenda shall include both consideration of the demand, and the possibility of corrective action by the Legislative Body.

In considering such demands, the Legislative Body shall first determine by motion whether to reconsider the prior action. The motion to reconsider shall be in order as long as made by a party on the prevailing side. If no motion to reconsider is carried the Clerk/Secretary shall inform the demanding party in writing of the Legislative Body's decision not to cure or correct the challenged action. (See, § 11.4 hereof.)

12.3 Implementing Corrective Action

If a motion to reconsider passes, the Presiding Officer may entertain a motion to take corrective action. Any motion taking corrective action shall address the concerns raised in the consideration of corrective action. The motion taking corrective action may include a motion to rescind prior action taken, as appropriate. Passage of a motion to rescind invalidates prior action only as of the time of the passage of the motion, and not from the date of the initial action. A motion implementing corrective action resulting

from a written demand is out of order if the action complained of: (i) was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness, or any contract, agreement, or incident thereto; (ii) gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied; or (iii) was taken in connection with the collection of any tax.

In any event, the Legislative Body shall notify the party making the demand in writing of its decision to take corrective action, and shall describe any corrective action taken. This notice shall be given to the demanding party as soon as possible after the meeting, but in no event more than 30 days after receipt of the demand.

ARTICLE XIII – MISCELLANEOUS

13.1 Interpretation

This Manual shall be liberally construed to effectuate its purpose and no ordinance, resolution, proceeding or other action of the Legislative Body shall be invalidated or the legality thereof otherwise affected by the failure or omission of the Legislative Body to technically comply with, observe or follow the within rules. The City Council may, by resolution, adopt further rules of interpretation or practice.

13.2 Amendments

This Manual may be amended from time to time as necessary by resolution passed by a majority vote of the City Council at any regular or special meeting, provided that no such amendment shall be adopted unless at least seven days' written notice thereof has been previously given to all Legislative Body members serving the City. Such notice shall identify the section or sections of the Manual proposed to be amended.

13.3 Power to Issue Subpoenas

The Legislative Body may issue subpoenas requiring attendance of witnesses or production of books or other document for evidence or testimony any action or proceeding pending before it. (Gov't Code Section 37104.) Subpoenas shall be signed by the Presiding Officer and attested by the Clerk. They may be served as subpoenas are in civil actions.

Manual Exhibit "A": Chart of Motions

1. Motions listed in the order of precedence

MOTION	YOU SAY THIS:	May you interrupt the speaker?	Do you need a second?	Is it a debatable?	Can it be amended?	What vote is needed?	Can it be reconsidered?
Adjourn meeting	"I move to adjourn"	No	Yes	No	No	Majority	No
Call an intermission ¹	"I move to recess for..."	No	Yes	No	Yes	Majority	No
Register a complaint	"I rise to a question of privilege"	Yes	No	No	No	None	No (usually)
Temporarily suspend consideration of an issue ²	"I move to table the motion"	No	Yes	No	No	Majority	No
Close debate	"I move the previous question"	No	Yes	No	No	2/3	No, unless the vote on question has not been taken
Limit or extend debate	"I move that the debate be limited [or "extended"] to..."	No	Yes	No	Yes	2/3	Yes
Give closer study of something ³	"I move to refer the motion to the committee"	No	Yes	Yes	Yes	Majority	Yes, unless the board has already taken up the subject.
Amend a motion	"I move to amend the motion by ..."	No	Yes	Yes	Yes	Majority	Yes
Motion to continue to a certain time	"I move that the motion be continued to..."	No	Yes	Yes	No	Majority	Yes
Introduce business (bring a main motion)	"I move that [or "to"] ..."	No	Yes	Yes	Yes	Majority	Yes

¹ Should specify period of recess.

² A motion to take up a matter previously tabled must be made at the same meeting as the motion to table. If not, the motion tabled dies.

³ May contain specific instructions for board members and a date for certain for reconsideration. If not date is not certain, restored by a motion to "take up matter previously tabled" which is permissible in this case even if not same or next meeting.

2. Incidental Motions – no order or precedence. Arise incidentally and decided immediately.

MOTION	YOU SAY THIS:	May you interrupt the speaker?	Do you need a second?	Is it a debatable?	Can it be amended?	What vote is needed?	Can it be reconsidered?
Protest breach of rules (i.e., Point of Order) ⁴	“I rise to a point of order ...”	Yes	No	No	No	None	No
Motion to appeal the ruling ⁵	“I appeal from the decision of the Presiding Officer [or “Chair”]	Yes	Yes	Yes	No	Majority	Yes
Suspend rules temporarily	“I move to suspend the rules so that ...”	No	Yes	No	No	2/3	No
Avoid considering an improper matter	“I object to the consideration of the question...”	Yes	No	No	No	2/3	No, only if the main question or motion was no, in fact considered.
Divide motion	“I move to divide the question	No	Yes	No	Yes	Majority	No
Parliamentary law question	Parliamentary inquiry	Yes, if urgent	No	No	No	None	No
Motion to depart from the agenda	“I move to consider matter ____ out of order”	No	Yes	Yes	Yes	Majority	Yes
Take up matter previously tabled ⁶	“I move to take from the table...”	No	Yes	No	No	Majority	No
Cancel or change previous action ⁷	“I move to rescind/amend something previously adopted...”	No	Yes	Yes	Yes	2/3 or majority with notice	No
Reconsider motion	“I move to reconsider the vote on...”	Yes	Yes	Only if motion to be reconsidered is debatable ⁸	No	Majority	No

⁴ Decision of the Presiding Officer is final, unless overturned by motion to appeal the ruling.
⁵ Presiding Officer may participate in debate. Negative or tie vote sustains ruling.

⁶ A motion to take up a matter previously tabled must be made at the same meeting as the motion to table. If not, the motion tabled dies.

⁷ Does not void action *ab initio*, only from point of rescission. Motion is out of order if relates to contract upon which another party has detrimentally relied, relates to issuance of bonded indebtedness, or relates to the collection of any tax.

⁸ Cannot be made on a quasi judicial matter or matters requiring a noticed public hearing. Can only be made by a member who voted with the previously prevailing side. May be made at the same meeting or a subsequent meeting subject to the same restrictions as a motion to rescind.

CITY COUNCIL/BANNING UTILITY AUTHORITY JOINT MEETING

DATE: **October 23, 2012**

TO: **City Council**

FROM: **Duane Burk, Director of Public Works**

SUBJECT: **Banning Utility Authority Resolution No. 2012-12UA, “Awarding the Construction Contract for Project No. 2010-05R, ‘Irrigation Water Line – Segment A’ and Rejecting All Other Bids and Approving Related Professional Services Agreements and Purchases”**

RECOMMENDATION: Adopt Banning Utility Authority Resolution No. 2012-12UA:

- I.** Awarding the Construction Contract for Project No. 2010-05R, “Irrigation Water Line – Segment A” to Tri Star Contracting II, Inc. of Desert Hot Springs, California for an amount of \$908,080.54 and allowing a 15% contingency of \$136,212.00.
- II.** Approving the Professional Services Agreement for Surveying and Construction Staking Services with Albert A. Webb Associates of Riverside, California, for an amount of “Not to Exceed” \$27,900.00 and a Professional Services Agreement for Construction Material Testing Services with Aragon Geotechnical, Inc. of Riverside, California, for an amount of “Not to Exceed” \$27,645.00.
- III.** Approving the purchase of materials from Pacific States Cast Iron Pipe Company in the amount of \$674,620.87.
- IV.** Authorizing the Administrative Services Director to appropriate \$1,774,458.41 from the Irrigation Water Fund to Account No. 662-6300-471.95-12 and to make the necessary budget adjustments, appropriations and transfers to fund this project and to approve change orders within the 15% contingency of \$136,212.00.
- V.** Authorizing the City Manager to execute the contract agreements for Project No. 2010-05R, “Irrigation Water Line – Segment A”.

JUSTIFICATION: Tri Star Contracting II, Inc. is the lowest responsive and responsible bidder to construct Project No. 2010-05R, “Irrigation Water Line – Segment A.”

BACKGROUND: On June 8, 2010 the Banning Utility Authority adopted No. 2010-04 UA, “Approving the Award of a Professional Services Agreement to Albert A. Webb Associates for the Modification of the Irrigation Waterline Design.” The scope of services included revisions and updates to plans originally prepared by CM Engineering Associates, Inc. in 1993. The required modifications to the 1993 plans were identified during the development of the Irrigation Water Master Plan by Carollo Engineers, Inc. in 2006.

The Irrigation Water Line has been broken up into three segments: A, B and C. Segment A includes the installation of the irrigation main line from the intersection of Sun Lakes Boulevard and Highland Home Road to the intersection of 22nd Street and Lincoln Street via Westward Avenue, Sunset Avenue and Lincoln Street. Segment B begins at the terminus point of Segment A and extends to the intersection of San Gorgonio Avenue and Lincoln Street, via Lincoln Street. Segment C begins at the terminus point of Segment B and extends to Well R-1 near the City's Wastewater Treatment Plant via Lincoln Street, Hathaway Street and Charles Street. The alignment of all three phases is shown in Exhibit "A".

The Public Works staff advertised a "Notice Inviting to Bid", as shown attached as Exhibit "B", on August 31, 2012 and September 7, 2012 for Project No. 2010-05R, "Irrigation Water Line – Segment A." On October 9, 2012 the City Clerk received nine (9) bids and publicly opened and read out loud the following results and as shown as attached Exhibit "C":

<u>Contractor</u>	<u>Total Bid</u>
1. Tri Star Contracting II, Inc.	\$908,080.54
2. Merlin Johnson Construction, Inc.	\$1,054,906.00
3. Downing Construction, Inc.	\$1,260,492.00
4. DDH Apple Valley Construction, Inc.	\$1,308,251.00
5. WEKA, Inc.	\$1,325,746.00
6. Trautwein Construction, Inc.	\$1,354,144.00
7. El-Co Contractors, Inc.	\$1,403,135.00
8. VCI Construction, Inc.	\$1,521,406.00
9. J. Fletcher Creamer & Sons, Inc.	\$1,565,026.00

The Engineer's estimate for the project was \$1,350,000.00. If approved the project is anticipated to begin in December, 2012.

In addition to the award of the construction contract, staff also requests the approval of two professional services agreements. The first, with Albert A. Webb Associates for surveying services including: construction staking, horizontal and vertical survey control points and post-construction centerline monument verification and re-establishment. The second, with Aragon Geotechnical, Inc. for providing construction material testing including backfill, subgrade and base section compaction testing and reporting.

Staff also requests the approval to purchase the irrigation mainline pipe material consisting of 8" and 24" ductile iron pipe and gaskets. Four material suppliers were contacted and requested to provide the city with a cost proposal to supply the main line material for Project No. 2010-05R, "Irrigation Water Line – Segment A." The lowest proposal was submitted by Pacific States Cast Iron Pipe Company in the amount of \$676,186.29. Staff has estimated an overall saving of approximately \$130,000.00 by purchasing the pipe material directly from the supplier versus including the procurement of the material by the contractor which would absorb the savings into overhead and material mark up.

FISCAL DATA: The total project cost is equal to \$1,774,458.41, which includes a 15% construction contingency, professional services costs and cost for purchasing construction

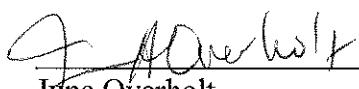
material. An appropriation in the amount of \$1,774,458.41 from the Irrigation Water Fund is needed in Account No. 662-6300-471.95-12.

RECOMMENDED BY:



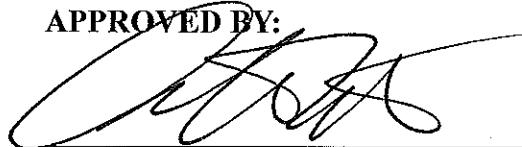
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2012-12UA

A RESOLUTION OF THE CITY COUNCIL OF THE BANNING UTILITY AUTHORITY RESOLUTION NO. 2012-12UA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2010-05R, "IRRIGATION WATER LINE – SEGMENT A" AND REJECTING ALL OTHER BIDS AND APPROVING RELATED PROFESSIONAL SERVICES AGREEMENTS AND PURCHASES

WHEREAS, the Public Works staff advertised a "Notice Inviting to Bid", as shown attached as Exhibit "B", on August 31, 2012 and September 7, 2012 for Project No. 2010-05R, "Irrigation Water Line – Segment A"; and

WHEREAS, the scope of the project includes the installation of 8" and 24" ductile iron pipe and appurtenances from the intersection of Sun Lakes Boulevard and Highland Home Road to the intersection of 22nd Street and Lincoln Street via Westward Avenue, Sunset Avenue and Lincoln Street; and

WHEREAS, on October 9, 2012 the City Clerk received and publicly read out loud nine (9) bids; and

WHEREAS, it has been determined that Tri Star Contracting II, Inc. of Desert Hot Springs, California is the lowest responsive and responsible bidder to construct Project No. 2010-05R, "Irrigation Water Line – Segment A"; and

WHEREAS, staff requests the approval of two professional services agreements: the first, with Albert A. Webb Associates for surveying services including: construction staking, horizontal and vertical survey control points and post-construction centerline monument verification and re-establishment; the second, with Aragon Geotechnical, Inc. for providing construction material testing including backfill, subgrade and base section compaction testing and reporting; and

WHEREAS, staff requests the approval to purchase the irrigation mainline pipe material consisting of 8" and 24" ductile iron pipe and gaskets for Project No. 2010-05R, "Irrigation Water Line – Segment A" from Pacific States Cast Iron Pipe Company.

NOW, THEREFORE, BE IT RESOLVED by the Banning Utility Authority of the City of Banning as follows:

SECTION 1. Banning Utility Authority adopts Resolution No. 2012-12UA awarding the Construction Contract for Project No. 2010-05R, "Irrigation Water Line – Segment A" to Tri Star Contracting II, Inc. of Desert Hot Springs, California for an amount equal to \$908,080.54 and allowing a 15% contingency of \$136,212.00 and rejecting all other bids.

SECTION 2. Banning Utility Authority approves the Professional Services Agreement for Surveying and Construction Staking Services with Albert A. Webb Associates of Riverside, California, for an amount of "Not to Exceed" \$27,900.00 and a Professional Services Agreement for Construction Material Testing Services with Aragon Geotechnical, Inc. of Riverside, California, for an amount of "Not to Exceed" \$27,645.00

SECTION 3. Banning Utility Authority approves the purchase of materials from Pacific States Cast Iron Pipe Company in the amount of \$674,620.87.

SECTION 4. Administrative Services Director is hereby authorized to appropriate \$1,774,458.41 from the Irrigation Water Fund to Account No. 662-6300-471.95-12 and to make the necessary budget adjustments, appropriations and transfers to fund this project and to approve change orders within the 15% contingency of \$136,212.00.

SECTION 4. The City Manager is authorized to execute the construction and professional services agreements for Project No. 2010-05R, "Irrigation Water Line – Segment A." This authorization will be rescinded if the contract agreements are not executed within forty-five (45) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 23th day of October, 2012.

Don Robinson, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary
Banning Utility Authority

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

David J. Aleshire, Authority Counsel
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-12 UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at a joint meeting thereof held on the 23rd day of October, 2012 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Banning Utility Authority
City of Banning, California

EXHIBIT "A"

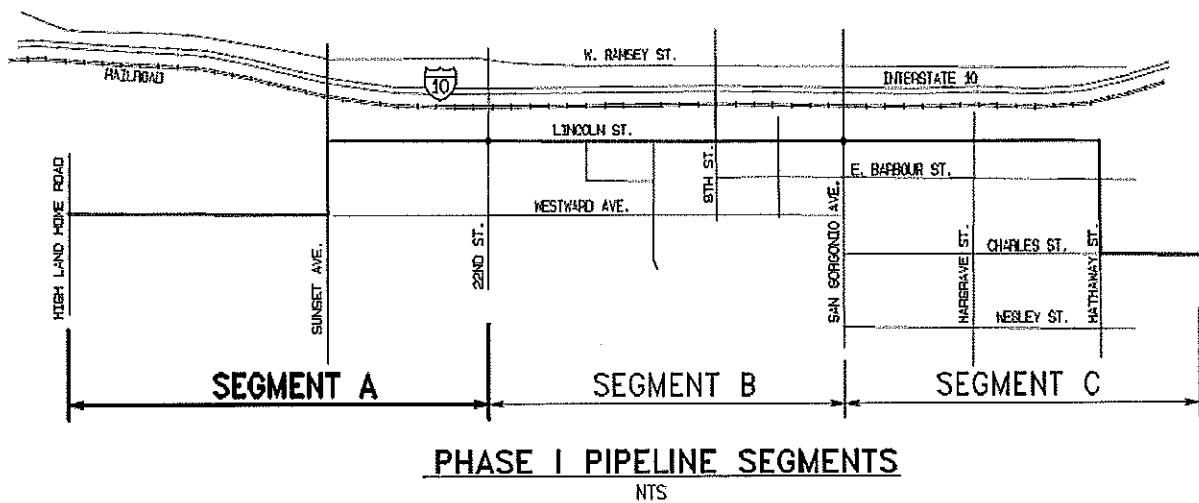


EXHIBIT "B"

NOTICE INVITING TO BID

NOTICE INVITING TO BID
PROJECT NO. 2010-05R, "IRRIGATION WATER SUPPLY SYSTEM
PHASE I – SEGMENT A"

OWNER: City of Banning

PROJECT DESCRIPTION: The primary scope of work under this project includes installation of a 24" ductile iron pipe irrigation water line and appurtenances such as butterfly valves, fire hydrants, air and vacuum valve assemblies, including the testing, chlorination and disinfection of the system all in accordance with the City of Banning Standard Specifications and California Department of Public Health Standards. The Contractor must comply with all NPDES requirements to reduce storm water run-off by implementing the project's Storm Water Pollution Prevention Plan (SWPPP), as required by the Public Works Inspector.

PLANS & SPECS: Full-size drawings and specifications will be made available on September 3, 2012, and may be obtained at the Public Works Department, Engineering Division, City of Banning, 99 E. Ramsey Street, Banning, California 92220, by a non-refundable deposit of Sixty Dollars (\$60.00) per set. An additional non-refundable charge of Fifteen Dollars (\$15.00) to cover the cost of wrapping, handling, and postage will be made for each set of Contract Documents mailed.

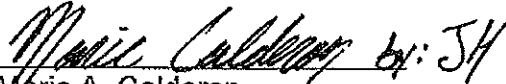
MANDATORY PRE-BID CONFERENCE: September 20, 2012 at 10:00 a.m. at the City of Banning, City Hall, 99 E. Ramsey St., Banning.

REQUIREMENTS: Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, etc., per the approved specifications. Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid **Class "A"** license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award.

SEALED BIDS DUE: October 9, 2012 and Opened Publicly at 2:30 p.m. local time, at the above City Hall address, Attn: City Clerk.

CITY OF BANNING, CALIFORNIA
Dated: 8/28/2012

Publication Date: 8/31/2012
9/07/2012



Marie A. Calderon
City Clerk

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EXHIBIT “C”

BID OPENING RESULTS

**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

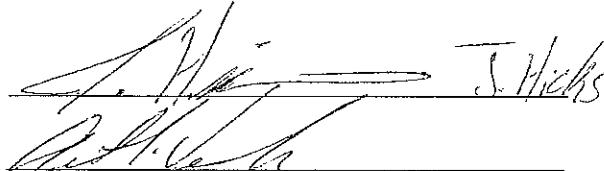
PROJECT NO.: 2010-05R

DESCRIPTION: IRRIGATION WATER SUPPLY SYSTEM PHASE 1 -
SECTION A

BID OPENING DATE: October 9, 2012 TIME: 2:30 a.m.

NAME OF BIDDER:	BID BOND	SCHEDULE 1	SCHEDULE 1A
J. FLETCHER CREAMER & SON, INC. Sylmar, CA	Yes	\$2,740,124.00	\$1,565,026.00
EL-CO CONTRACTORS INC. San Bernardino, CA	Yes	\$2,050,170.00	\$1,402,135.00
TRI-STAR CONTRACTING II, INC. Desert Hot Springs, CA	Yes	\$1,710,969.80	\$908,080.54
VCI CONSTRUCTION, INC. Upland, CA	Yes	\$2,235,931.00	\$1,521,406.00
DDH APPLE VALLEY CONSTRUCTION, INC. Apple Valley, CA	Yes	\$1,869,686.00	\$1,308,251.00
WEKA, INC. Highland, CA	Yes	\$2,028,587.00	\$1,325,746.00
MERLIN JOHNSON CONSTRUCTION, INC. Mentone, CA	Yes	\$1,853,568.75	\$1,054,926.00
DOWNING CONSTRUCTION, INC. Yucaipa, CA	Yes	\$2,063,609.00	\$1,260,492.00
TRAUTWEIN CONST INC. Rancho Cucamonga, CA	Yes	\$2,124,076.00	\$1,354,144.00

VERIFIED BY:


J. W. — S. Hicks
R. L. Clark

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CITY COUNCIL AGENDA

DATE: October 23, 2012

TO: Members of the City Council

FROM: Andrew J. Takata, City Manager

SUBJECT: Adopt Ordinance No. 1457 and Urgency Ordinance No. 1458, amending Ordinance No. 1442 setting forth a procedure for the rotation of the office of mayor and other positions held by council members. Proposed Ordinances are presented in both standard and urgency form to ensure it is in effect for mayoral appointment this year.

RECOMMENDATIONS:

(1) Waive further reading and adopt Ordinance No. 1457 amending Ordinance No. 1442, entitled as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING ORDINANCE NO. 1442 SETTING FORTH A PROCEDURE FOR THE ROTATION OF THE OFFICE OF MAYOR AND OTHER POSITIONS HELD BY COUNCILMEMBERS

(2) Waive further reading and adopt, *by four-fifths vote*, Urgency Ordinance No. 1458 amending Ordinance No. 1442, entitled as follows:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING ORDINANCE NO. 1442 SETTING FORTH A PROCEDURE FOR THE ROTATION OF THE OFFICE OF MAYOR AND OTHER POSITIONS HELD BY COUNCILMEMBERS

JUSTIFICATION FOR STANDARD AND URGENCY ORDINANCES:

Ordinance No. 1442 rotates council members through a series of positions for one year terms, including chair and vice chair of the redevelopment agency. With the dissolution of the redevelopment agency pursuant to ABX1 26 and AB 1484, the positions of chair and vice chair of the redevelopment agency no longer exist. This Ordinance amends Ordinance No. 1442 to eliminate positions for council members in the dissolved agency, and sets forth a new procedure for rotation.

In addition to the standard ordinance protocol, the Council is also presented with an “urgency” ordinance that is identical in nature, excepting that the urgency ordinance takes immediate effect.

The urgency ordinance must be adopted by a four-fifths vote to take effect. The urgency ordinance is presented because the typically-adopted ordinance (i.e., first/second reading plus 30 days) may not take effect in time for the upcoming mayoral appointment this year. It is proposed that the Council can make a requisite finding of urgency because, without a clear and updated rule for mayoral rotation in place, the appointment of a mayor at the first meeting in December will be confounded or delayed because the current policy contains rotational seats that have been eliminated by the State's legislation dissolving RDAs.

DISCUSSION:

The City Council has expressed the opinion that each member elected to the Council is equally qualified and deserving to hold the offices of mayor, mayor pro tempore and chair/vice chair of various city boards. Ordinance No. 1442 set forth a rotational appointment system for these offices in order to give all Councilmembers ample opportunity to serve in these offices. The rotational system encourages a spirit of cooperation in that each councilmember will eventually need their colleague's votes. The City Council of the City of Banning adopted Ordinance No. 1442 and added it to the Banning Municipal Code on October 25, 2011.

On February 1, 2012, ABX1 26 and AB 1484 went into effect, thereby dissolving redevelopment agencies in California. As a result, the positions of chair and vice chair of the redevelopment agency were eliminated, necessitating an amendment to Ordinance No. 1442 to account for these developments.

The proposed Ordinance sets a rotation for the appointment of the offices of mayor, mayor pro tem, chair and vice-chair of the housing authority, and no office. Councilmembers will rotate through these positions in the order stated below, with the person serving as mayor rotating to hold no office for the subsequent term, or the highest unfilled office available in the rotation after the rotation of other incumbent councilmembers (pursuant to the "rotational succession list" below), following their completion of their term as mayor.

- (a.) Mayor.
- (b.) Mayor pro tem.
- (c.) Chair of the housing authority.
- (d.) Vice chair of the housing authority.

When the outgoing mayor rotates out of his or her position, each other councilmember will move up one position, in order that the outgoing mayor pro tem becomes the new mayor, the outgoing chair of the housing authority becomes the new mayor pro tem, and the outgoing vice chair of the housing authority becomes the new chair of the housing authority. The outgoing councilmember having no office becomes the new vice chair of the housing authority. The outgoing mayor will have no office for the subsequent term.

Essentially, the key change in the proposed amended Ordinance(s) is the elimination of any position related to the redevelopment agency.

FISCAL DATA:

No fiscal impacts are expected.

RECOMMENDED BY:

David J. Aleshire
City Attorney

APPROVED BY:



Andrew J. Takata
City Manager

Attachment:

1. Ordinance No. 1457
2. Ordinance No. 1458

ORDINANCE NO. 1457

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING ORDINANCE NO. 1442 SETTING FORTH A PROCEDURE FOR THE ROTATION OF THE OFFICE OF MAYOR AND OTHER POSITIONS HELD BY COUNCILMEMBERS

WHEREAS the City of Banning is currently operating under Ordinance No. 1442, setting forth a procedure for the rotation of the office of mayor and other positions held by Councilmembers;

WHEREAS Ordinance No. 1442 rotates each of the five (5) members of the City Council through the position of Mayor, Mayor Pro Tem, Chair of the Community Redevelopment Agency ("Agency"), Chair of the Housing Authority ("Authority"), and Vice Chair of the Agency and Vice Chair of the Authority;

WHEREAS redevelopment agencies were dissolved in the State of California on February 1, 2012, pursuant to ABx1 26 and AB 1484, thereby eliminating the positions of Chair of the Agency, and Vice Chair of the Agency; and

WHEREAS it is necessary to change the rotation established by Ordinance 1442 to eliminate the offices of the former Agency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1.

Section 2.04.070 of the Banning Municipal Code is amended to read in its entirety as follows:

"2.04.070. Rotation of Mayor and Other Offices

- A. General. The City of Banning has a council/manager form of city government. All five members of the city council are elected at large to four-year terms. Additionally, the city has related agencies including the housing authority. These entities have various officers, including chair person and vice chair person. The city council believes that all councilmembers have the capability of performing these offices and should be given the opportunity to do so through a rotational system.
- B. Rotation of councilmembers through the office of mayor and other offices.

1. The mayor shall be selected by a majority vote of the councilmembers in December of each year, which shall be known as the annual organization meeting, for a one-year term.
2. The persons serving as councilmembers of the city shall rotate through certain offices of the city and its constituent agencies in the order stated below, with the person serving as mayor rotating to hold no office for the subsequent term, or the highest unfilled office available in the rotation after the rotation of other incumbent councilmembers (pursuant to the "rotational succession list" below), following their completion of their term as mayor.
 - (a.) Mayor.
 - (b.) Mayor pro tem.
 - (c.) Chair of the housing authority.
 - (d.) Vice chair of the housing authority.
3. With the rotation of the person holding the office of mayor, all other members shall move up one position, in order that the outgoing mayor pro tem shall become the new mayor, the outgoing chair of the housing authority shall become the new mayor pro tem, the outgoing vice chair of the housing authority shall become the new chair of the housing authority, and the outgoing councilmember having no office shall become the new vice chair of the housing authority. The outgoing mayor shall have no office for the subsequent term.
4. If any councilmember should decline to serve in the position to which they would rotate to, they shall fall to the bottom of the rotation, and hold.
5. At the first annual organizational meeting following any council election, the rotation to the highest available office shall be made amongst the incumbent councilmembers. Thereafter, the unfilled offices shall be filled by any newly elected member of the council. If there is more than one newly elected member, then the order among the new members shall be determined by the person who received the highest number of votes at the election taking the highest available office.

C. Removal. With a majority vote of the body, any officer holding any office governed by the rotational policy may be replaced, but in general, such changes should not be made in midterm, and if made, the rotation established hereunder shall be utilized to advance every officer to the next level.

- D. Vacancies. Any councilmember appointed to fill a vacancy shall be added immediately to the bottom of the rotational succession list, and all other members on the succession list shall move up to a higher ranked position, if any.
- E. Office of the mayor pro tem. The mayor pro tem will serve as mayor in the event of the absence of the mayor and will be appointed as the mayor when there is a vacancy in the office of mayor. The selection of the mayor pro tem will follow the rotation policy stated above in subsection 2.04.070(A).
- F. Duties. The mayor, if present, shall preside as chairperson at all meetings of the city council. In the absence of the mayor, the mayor pro tem shall preside. In the absence of both the mayor and mayor pro tem, the next officer in the rotation succession list shall serve as chairperson. The chairperson shall preserve order and decorum. The chairperson may make or second any motion and present and discuss any matter as a member of the city council. The person serving as mayor accepts the responsibility to be the city's official representative for all events where representation is necessary, except where otherwise provided by the council, and for signing all contracts and official documents and correspondence.

SECTION 2. Effective Date.

The City Clerk shall certify to the passage and adoption of this ordinance by the City Council of the City of Banning and shall, within 15 days after its final passage, cause the same to be published once in the Record Gazette, a newspaper of general circulation which is hereby designated for that purpose. This ordinance shall take effect 30 days after its passage.

SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. Supersedes.

The provisions of this ordinance supersede any conflicting resolutions or ordinances, and any such resolutions or ordinances shall be construed in such a manner as to carry out the intent of this ordinance.

PASSED, APPROVED, AND ADOPTED this _____ day of _____ ,
2012.

Don Robinson, Mayor
City of Banning California

ATTEST:

Marie A Calderon, City Clerk
City of Banning, California

**APPROVED AS TO FORM AND
LEAGAL 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 Ordinance No. 1457 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 23rd day of October, 2012, and was duly adopted at a regular meeting of said City Council on the _____ day of November, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ORDINANCE NO. 1458

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING ORDINANCE NO. 1442 SETTING FORTH A PROCEDURE FOR THE ROTATION OF THE OFFICE OF MAYOR AND OTHER POSITIONS HELD BY COUNCILMEMBERS

WHEREAS the City of Banning is currently operating under Ordinance No. 1442, setting forth a procedure for the rotation of the office of mayor and other positions held by Councilmembers;

WHEREAS Ordinance No. 1442 rotates each of the five (5) members of the City Council through the position of Mayor, Mayor Pro Tem, Chair of the Community Redevelopment Agency ("Agency"), Chair of the Housing Authority ("Authority"), and Vice Chair of the Agency and Vice Chair of the Authority;

WHEREAS redevelopment agencies were dissolved in the State of California on February 1, 2012, pursuant to ABx1 26 and AB 1484, thereby eliminating the positions of Chair of the Agency, and Vice Chair of the Agency; and

WHEREAS it is necessary to change the rotation established by Ordinance 1442 to eliminate the offices of the former Agency. Such change in rotation is urgent given that the next mayoral appoint occurs at the first regular meeting in December of this year. If the change and update in rotation to meet current law does not take effect prior to the time for mayoral rotation, appointment of a mayor will be confounded or delayed to the public's detriment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1.

Section 2.04.070 of the Banning Municipal Code is amended to read in its entirety as follows:

"2.04.070. Rotation of Mayor and Other Offices

- A. General. The City of Banning has a council/manager form of city government. All five members of the city council are elected at large to four-year terms. Additionally, the city has related agencies including the housing authority. These entities have various officers, including chair person and vice chair person. The city council believes that all councilmembers have the capability of performing these offices and should be given the opportunity to do so through a rotational system.
- B. Rotation of councilmembers through the office of mayor and other offices.

1. The mayor shall be selected by a majority vote of the councilmembers in December of each year, which shall be known as the annual organization meeting, for a one-year term.
2. The persons serving as councilmembers of the city shall rotate through certain offices of the city and its constituent agencies in the order stated below, with the person serving as mayor rotating to hold no office for the subsequent term, or the highest unfilled office available in the rotation after the rotation of other incumbent councilmembers (pursuant to the "rotational succession list" below), following their completion of their term as mayor.
 - (a.) Mayor.
 - (b.) Mayor pro tem.
 - (c.) Chair of the housing authority.
 - (d.) Vice chair of the housing authority.
3. With the rotation of the person holding the office of mayor, all other members shall move up one position, in order that the outgoing mayor pro tem shall become the new mayor, the outgoing chair of the housing authority shall become the new mayor pro tem, the outgoing vice chair of the housing authority shall become the new chair of the housing authority, and the outgoing councilmember having no office shall become the new vice chair of the housing authority. The outgoing mayor shall have no office for the subsequent term.
4. If any councilmember should decline to serve in the position to which they would rotate to, they shall fall to the bottom of the rotation, and hold.
5. At the first annual organizational meeting following any council election, the rotation to the highest available office shall be made amongst the incumbent councilmembers. Thereafter, the unfilled offices shall be filled by any newly elected member of the council. If there is more than one newly elected member, then the order among the new members shall be determined by the person who received the highest number of votes at the election taking the highest available office.

C. Removal. With a majority vote of the body, any officer holding any office governed by the rotational policy may be replaced, but in general, such changes should not be made in midterm, and if made, the rotation established hereunder shall be utilized to advance every officer to the next level.

D. Vacancies. Any councilmember appointed to fill a vacancy shall be added immediately to the bottom of the rotational succession list, and all other members on the succession list shall move up to a higher ranked position, if any.

- E. Office of the mayor pro tem. The mayor pro tem will serve as mayor in the event of the absence of the mayor and will be appointed as the mayor when there is a vacancy in the office of mayor. The selection of the mayor pro tem will follow the rotation policy stated above in subsection 2.04.070(A).
- F. Duties. The mayor, if present, shall preside as chairperson at all meetings of the city council. In the absence of the mayor, the mayor pro tem shall preside. In the absence of both the mayor and mayor pro tem, the next officer in the rotation succession list shall serve as chairperson. The chairperson shall preserve order and decorum. The chairperson may make or second any motion and present and discuss any matter as a member of the city council. The person serving as mayor accepts the responsibility to be the city's official representative for all events where representation is necessary, except where otherwise provided by the council, and for signing all contracts and official documents and correspondence.

SECTION 2. Effective Date.

The City Clerk shall certify to the passage and adoption of this ordinance by the City Council of the City of Banning and shall, within 15 days after its final passage, cause the same to be published once in the Record Gazette, a newspaper of general circulation which is hereby designated for that purpose. This ordinance shall take effect immediately after its passage.

SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. Supersedes.

This ordinance supersedes any conflicting resolutions or ordinances, and any such resolutions or ordinances shall be construed so as to carry out the intent of this ordinance.

SECTION 5. Urgency and Effective Date.

This ordinance is hereby declared to be an urgency measure and shall take effect immediately upon its adoption. The findings set out above in the recitals of this ordinance support the need for this urgency measure and are incorporated herein by reference. Additionally, in accordance with the requirements of Government Code section 36937, subdivision (b), the City Council hereby declares that the provisions contained herein are necessary for the immediate preservation of the public peace, health or safety for the following reasons: (i) the mayoral seat is a critical component of the City's policy-making and administration of public business, and (ii) the mayor serves as the chair of all City Council

meetings, and (iii) disputes about who should properly be appointed as mayor can only delay and detriment the City's ability to administer public business and efficiently conduct public meetings, and (iv) the State's dissolution of RDAs eliminates certain seats in the current rotation policy, and (v) without a clear and updated rule for mayoral rotation in place by December 2012, the appointment of a mayor will be confounded or delayed to the public's detriment.

PASSED, APPROVED, AND ADOPTED, held on this 23rd day of October, 2012.

Don Robinson, 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 A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1458 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 23rd day of October, 2012, and was duly adopted at a regular meeting of said City Council on the 23rd day of October, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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