

**AGENDA
SPECIAL MEETING
BANNING CITY COUNCIL
BANNING, CALIFORNIA**

**December 20, 2012
3:00 p.m.**

**Banning Civic Center
Council Chambers
99 E. Ramsey Street**

I. CALL TO ORDER

Roll Call – Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin

II. PUBLIC COMMENTS

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.)

III. CONSENT ITEMS

Motion: That the City Council approve Consent Item 1

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

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

1. Resolution No. 2012-99, Approving Side Letter Agreements to the Memorandum of Understanding Between the City of Banning Police Management Association (BPMA), the Banning Police Officers Association (BPOA) Representing the Police Unit Employees and the City of Banning 1

- Open for Public Comments
- Make Motion

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

VI. ORDINANCE-INTRODUCTION/ADOPTION

1. Urgency Ordinance to Amendment to CalPERS Contract for a Two Tier Plan for the Safety Employees.

Staff Report. 5

Recommendation: That the City Council adopt Urgency Ordinance No. 1460, Amending the City's contract with the California Employees' Retirement System (CalPERS) to implement the lower-level retirement formula for new safety employees at 2% @50 retirement formula with the final compensation calculation based on an average 36 month period.

Mayor asks the City Clerk to read the title of Ordinance No. 1460:

"An Urgency Ordinance of the City Council of the City of Banning, California, Authorizing an Amendment to the Contract Between the City Council of the City of Banning and the Board of Administration to the California Public Employees' Retirement System.

Motion: I move to waive further reading of Urgency Ordinance No. 1460.

(Requires a majority vote of Council)

Motion: I move that Urgency Ordinance No. 1460 be adopted.

V. 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. 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. 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].

CITY COUNCIL AGENDA

DATE: December 20, 2012

TO: Mayor and City Council

FROM: June Overholt, Administrative Services Director/Deputy City Manager

SUBJECT: Side Letter Agreement with the Banning Police Officers Association (BPOA) and the Banning Management Association (BPMA)

RECOMMENDATION: Adopt Resolution No. 2012-99 approving Side Letter Agreement with the Banning Police Management Association (BPMA) pending adoption of a Memorandum of Understanding (MOU) setting forth the complete negotiated terms and conditions of employment for the BPMA represented employees and approving the Side Letter Agreement with the Banning Police Officers Association (BPOA).

JUSTIFICATION: Section 3505.1 of the Meyers-Milias-Brown Act ("MMBA") (Gov't Code Sections 3500-3511) provides that: "If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination." Once approved by the governing body of the local agency, a Side Letter Agreement between the City and its recognized employee organizations regarding changes in terms and conditions of employment becomes a binding agreement between the employee organizations and the local government. *Thus, City Council approval of the signed and ratified Side Letter Agreement between the parties is required by the MMBA in order to be binding on the parties.*

BACKGROUND: Although negotiations are ongoing with all bargaining groups to negotiate successor MOUs, the recently enacted Public Employees' Pension Reform Act of 2013 (AB340) takes effect January 1, 2013, and closes the opportunity for the foreseeable future of addressing retirement costs for new employees currently vested in CalPERS through a previous employer. During negotiations with the employee bargaining groups, the City proposed implementation of a two-tier retirement system for new members. The attached Side Letter Agreements memorialize that the safety employee bargaining units have agreed to and ratified a second tier retirement formula for new public safety employees: 2% @ 50 retirement formula subject to the final compensation calculation based on an average 36 month period.

This tier will apply to new public safety employees vested in CalPERS through a previous employer (often referred to as legacy employees). Approval of this retirement formula does not impact current public safety employees. Approval of these Side Letter Agreements is necessary including the separate agenda report with changes to the ordinance that authorizes CalPERS and the City to add this proposed second public safety retirement tier before the December 31, 2012 deadline. Implementation of this second tier allows the City to have reduced retirement costs in the future.

FISCAL DATA: For the second tiered plan for public safety employees, the immediate fiscal impact is unknown due to the fact that the 2@50 retirement formula for public safety members will only be given to new "legacy" employees hired after the approval and implementation of the new second tier. Savings will come in the future through lower rates as more and more of the work force is on the lower pension plan. Staff recognizes through discussions with the bargaining groups that there may be challenges with recruitments in the future due to the lower retirement benefit.

RECOMMENDED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy J. Takata
City Manager

Attachments:

1. Resolution No. 2012-99 – Approval of the Side Letter of Agreements with both the BPMA and BPOA
2. Side Letter Agreement – BPMA
3. Side Letter Agreement - BPOA

RESOLUTION NO. 2012-99

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING SIDE LETTER AGREEMENTS BETWEEN THE CITY AND THE BANNING POLICE MANAGEMENT ASSOCIATION (BPMA) AND THE BANNING POLICE OFFICERS ASSOCIATION (BPOA) REPRESENTING THE CITY'S PUBLIC SAFETY EMPLOYEES

WHEREAS, the City of Banning has recognized the Banning Police Management Association ("Association") and the Banning Police Officers Association (BPOA) as the employee organizations charged with representing the City's public safety employees, with the exception of the Police Chief; and

WHEREAS, the City and the BPOA entered into a Memorandum of Understanding (MOU) which expired June 30, 2011, but whose terms and conditions generally continue until otherwise negotiated; and

WHEREAS, the City and the BPOA are currently in negotiations for a successor BPOA MOU; and

WHEREAS, the City and the BPMA are currently negotiating their first Memorandum of Understanding (MOU); and

WHEREAS, the City proposed a new two tiered retirement formula for all safety employees in an effort to achieve cost savings for the City; and

WHEREAS, with the recent passage of the Public Employees' Pension Reform Act of 2013 (AB340), the opportunity to implement a two tiered retirement formula for new employees that are currently vested in CalPERS expires on December 31, 2012; and

WHEREAS, the City and the BPOA and BPMA have met in good faith to approve a second tier public safety retirement plan known as the 2% @ 50 retirement formula; and

WHEREAS, the City and the BPOA and BPMA have successfully negotiated Side Letter Agreements regarding implementation of the 2% @ 50 retirement formula for new hires in accordance with the guidelines of the Meyers-Milias-Brown Act ("MMBA"), the City's Employer-Employee Relations resolution ("Resolution No. 2010-45") and CalPERS regulations;

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

SECTION 1:

1. That the City Council approves the Side Letter Agreements between the City and both the BPOA and the BPMA providing for two tiered retirement for safety employees at the 2% @ 50 retirement formula, copies of which are attached hereto and by this reference made a part hereof; and
2. The Administrative Services Director is authorized to make the necessary budget adjustments as applicable.

PASSED, APPROVED AND ADOPTED this 20th day of December, 2012 at Banning, California.

Debbie Franklin, Mayor
City of Banning, California

APPROVED AS TO FORM AND
LEGAL CONTENT

David Aleshire, Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon
City Clerk of the City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2012-99 was duly adopted by the City Council of the City of Banning, California, at a special meeting thereof held on the 20th day of December, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**SIDE LETTER AGREEMENT BETWEEN
THE CITY OF BANNING,
AND
THE CITY OF BANNING POLICE MANAGEMENT ASSOCIATION
REGARDING TWO TIERED RETIREMENT
FOR REPRESENTED PUBLIC SAFETY EMPLOYEES
(DECEMBER, 2012)**

4A

**SIDE LETTER AGREEMENT BETWEEN THE CITY OF BANNING, AND THE CITY OF
BANNING POLICE MANAGEMENT ASSOCIATION REGARDING TWO TIERED
RETIREMENT FOR REPRESENTED PUBLIC SAFETY EMPLOYEES**

PREAMBLE

The City of Banning, a Municipal Corporation, hereinafter known as "the City" or "City" and the authorized representatives of the Banning Police Management Association, the newly recognized employee organization of the Police Management Unit, hereinafter known as "the Association" or "BPMA", have continued on and off good faith negotiations for an initial Memorandum of Understanding ("MOU" or "Agreement"). The negotiations have been delayed in large part due to successive and ongoing negative fiscal impacts to the City caused by both the local economy and statewide events beyond the City's control. However, the parties have recently resumed negotiations in an effort to agree upon terms for a first MOU. In the meantime, the parties have agreed to allow the City to attempt to implement a two tiered retirement plan for public safety employees prior to January 1, 2013 as described more fully below and contingent upon agreement with all City public safety employee organizations and approval by CalPERS.

The purpose of this Side Letter Agreement is to memorialize the meet and confer discussions and agreement reached on this particular issue of two tiered retirement which would be an express modification of the terms and conditions of employment as they presently exist. Thus, this Side Letter Agreement is the product of meet and confer labor negotiations between the parties pursuant to Chapter 10 (Section 3500 et. seq.) of Division 4, Title 1 of the Government Code and pursuant to Resolution No. 2010-45, the Employer-Employee Relations Resolution of the City of Banning.

ARTICLE 22 - RETIREMENT AND MEDICARE (Modification)

22.2 CalPERS Formulas.

(a) The City agrees to continue to pay the employer's portion of the "Three Percent at Fifty" (3% @ 50) CalPERS Retirement for Public Safety (sworn personnel) employees, including the "single highest year" benefit, for all current Police Management Unit employees.

(b) City Council shall be authorized to adopt and implement resolutions prior to December 31, 2012 providing for two tiered retirement for Police Management Unit employees hired on or after such resolution adoption providing for the "Two Percent at Fifty" (2% @ 50) retirement formula with final compensation defined as the highest average annual final compensation during a consecutive thirty-six (36) month period.

(c) For new employees hired on or after January 1, 2013, the parties understand and acknowledge that per AB340 CalPERS shall determine whether the new employees are eligible for the previously implemented "Two Percent at Fifty" (2% @ 50) retirement formula with final compensation defined as the highest average annual final compensation during a consecutive thirty-six (36) month period or shall only be eligible for the newly created retirement plan known as "The Safety Option Plan Two formula" (2.7%)

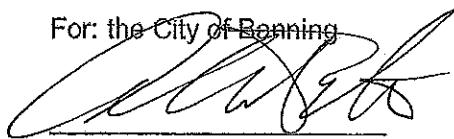
@ 57) with final compensation defined as the highest average annual final compensation during a consecutive thirty-six (36) month period.

ARTICLE 30 – RATIFICATION AND EXECUTION

The Association represents that this Side Letter Agreement has been ratified by its members and therefore the City's representatives and the BPMA jointly recommend this Side Letter Agreement to the City Council for the City of Banning. The parties hereto acknowledge that this Side Letter Agreement shall not be in full force and effect until adoption by the Banning City Council.

In witness whereof, the parties have caused their signatures to be affixed this 18th day of December, 2012.

For: the City of Banning



Andy Takata,
City Manager

Colin Tanner

Colin Tanner,
Lead Negotiator

For the BPMA.



Mike West
President

Phil Holder
Board Member

June Overholt,
Administrative Services Director/
Deputy City Manager



Rita Chapparosa,
Deputy HR Director

**SIDE LETTER AGREEMENT BETWEEN
THE CITY OF BANNING,
AND
THE CITY OF BANNING POLICE OFFICERS ASSOCIATION
REGARDING TWO TIERED RETIREMENT
FOR REPRESENTED PUBLIC SAFETY EMPLOYEES
(DECEMBER, 2012)**

**SIDE LETTER AGREEMENT BETWEEN THE CITY OF BANNING, AND THE CITY OF
BANNING POLICE OFFICERS ASSOCIATION REGARDING TWO TIERED
RETIREMENT FOR REPRESENTED PUBLIC SAFETY EMPLOYEES**

PREAMBLE

This most current Memorandum of Understanding ("MOU" or "Agreement") between the City of Banning, a Municipal Corporation, hereinafter known as "the City" or "City" and the authorized representatives of the Banning Police Officers Association, the recognized employee organization of the Police Unit, hereinafter known as the "Union" or "BPOA", expired June 30, 2011. Since that time, the parties have continued on and off good faith negotiations over a successor MOU. The negotiations have been delayed in large part due to successive and ongoing negative fiscal impacts to the City caused by both the local economy and statewide events beyond the City's control. However, the parties have recently resumed negotiations in an effort to agree upon terms for a successor MOU.

The parties have recently reached agreement on the deal points of a successor MOU, which this Side Letter memorializes and when approved by City Council action is binding on the parties subject to final expression in a more formal MOU. In exchange for the deal points set below, the parties have agreed to allow the City to implement the agreed upon two tiered retirement plan for BPOA represented public safety and miscellaneous employees prior to January 1, 2013 as described more fully below and contingent upon agreement with all City public safety employee organizations and approval by CalPERS. Thus, the purpose of this Side Letter Agreement is to memorialize the meet and confer discussions and general deal points reached and the agreement made on this particular issue of two tiered retirement which would be an express modification of the terms and conditions of the pre-existing expired MOU. Accordingly, this Side Letter Agreement is the product of meet and confer labor negotiations between the parties pursuant to Chapter 10 (Section 3500 et. seq.) of Division 4, Title 1 of the Government Code and pursuant to Resolution No. 2010-45, the Employer-Employee Relations Resolution of the City of Banning.

DEAL POINTS (REFLECTED AS CHANGES TO PRIOR MOU LANGUAGE)

1.3 - Term - Except as otherwise provided herein, this Agreement between the City and the Union relative to wages, hours, and other terms and conditions of employment shall become effective as of adoption by the Banning City Council through June 30, 2013.

12.1 - Salary Adjustment --- All represented Unit members shall receive a six percent (6%) salary increase and three salary range adjustment effective with and contingent upon the concurrent elimination of City paid employee member contributions, commonly known as the Employer Paid Member Contribution ("EPMC"), to the California Public Employees Retirement System ("CalPERS"), which for those hired on or before January 1, 2011 is currently nine percent (9%) of the sworn employees' regular and special compensation and eight percent (8%) for non-sworn miscellaneous members.

22.1 CalPERS Contributions

- a) As Employer Paid Member Contribution ("EPMC"), the City will continue to pay each Unit member's employee contribution, nine percent (9%) of the sworn employees' regular and special compensation and eight percent (8%) for non-sworn miscellaneous members hired on or before January 1, 2011, to the California Public Employees Retirement System ("CalPERS") until January 1, 2013.
- b) Effective January 1, 2013 or soon thereafter as city council adopts a resolution effectuating such a change and contingent upon the concurrent salary adjustment set forth in Article 12, the City will cease paying EPMC and/or of the employee's 9% or 8% share of the employee's required contribution to CalPERS. Thus, each Unit employee shall pay their own 9% or 8% employee contribution to CalPERS.
- c) All Unit employees hired on or after January 1, 2011 shall continue to pay their full member contribution for their CalPERS retirement plan. In addition, per AB340, new employees will be subject to paying at least 50% of the normal costs.

22.2 CalPERS Formulas

- (a) The City agrees to continue to pay the employer's portion of the "Three Percent at Fifty" (3% @ 50) Public Safety formula and the "Two Point Five Percent at Fifty-Five" (2.5% @ 55) miscellaneous formula CalPERS retirement for current employees.
- (b) City Council shall be authorized to adopt and implement resolutions providing for a two tiered retirement plan known as the "Two Percent at Fifty" (2% @ 50) formula for safety employees and the "Two Percent at Sixty" (2% @ 60) formula for miscellaneous employees. All Unit employees hired on or before such resolution adoption shall remain at the current existing "Three Percent at Fifty" (3% @ 50) retirement formula for safety employees and the "Two Point Five Percent at Fifty-Five" (2.5% @ 55) formula for miscellaneous employees.
- (c) Unit employees hired on or after January 1, 2013 shall be enrolled in either the "Two Percent at Fifty" (2% @ 50) formula for safety employees and the "Two Percent at Sixty" (2% @ 60) formula for miscellaneous employees or the "Two Point Seven Percent at Fifty-Seven" (2.7% @ 57) formula for safety employees and the "Two Point Seven Percent at Sixty-Two" (2% @ 62) formula for Miscellaneous employees depending upon eligibility rules as established by CalPERS under AB340 and related statutes.
- (d) Per AB340, employees hired on or after January 1, 2013 shall also be required to have their final compensation defined as the highest average annual final compensation during a consecutive 36 month period, subject to the cap. Current employees, hired before January 1, 2013, will maintain the "single highest year" benefit.

27.3 Vacant Positions - The level of service and number of employees remain a management prerogative and the parties agree that the City may elect not to fill four (4) current or soon to be vacant police officer positions as a cost saving mechanism.

29.2 Re-Openers - The parties agree, however, to the following re-openers:

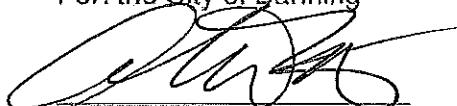
....

b) The parties agree that in the event that Unit overtime exceeds by more than five percent (5%) in a month in the regular operating overtime account, the baseline experience defined as the average of the last four months of 2012, then the parties will reopen the contract to meet and confer regarding a means and method to address this increase in expense.

The BPOA represents that the agreements reflected in this Side Letter Agreement have been ratified by its members and therefore the City's representatives and the BPOA jointly recommend this Side Letter Agreement to the City Council for the City of Banning. The parties hereto acknowledge that this Side Letter Agreement shall not be in full force and effect until adoption by the Banning City Council.

In witness whereof, the parties have caused their signatures to be affixed this 19th day of December, 2012.

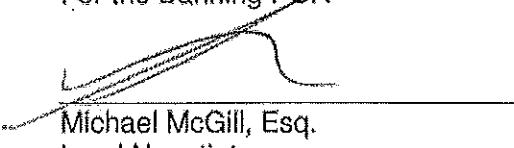
For: the City of Banning



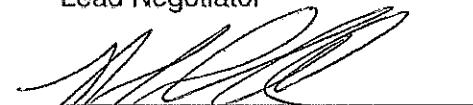
Andy Takata,
City Manager

Colin Tanner,
Lead Negotiator

For the Banning POA



Michael McGill, Esq.
Lead Negotiator



Brian Callahan
BPOA Representative

June Overholt,
Administrative Services Director/
Deputy City Manager



Rita Chapparosa,
Deputy Human Resources Director

Brandon Smith
BPOA Representative

Matt Friesen
BPOA Representative

CITY COUNCIL AGENDA

DATE: December 11, 2012

TO: Mayor and City Council

FROM: June Overholt, Administrative Services Director/Deputy City Manager

SUBJECT: Urgency Ordinance to Amendment to CalPERS Contract for a Two Tier Plan for the Safety employees.

RECOMMENDATION: That the City Council adopt Urgency Ordinance No. 1460 amending the City's contract with the California Public Employees' Retirement System (CalPERS) to implement the lower-level retirement formula for new safety employees at the 2% @ 50 retirement formula with the final compensation calculation based on an average 36 month period.

JUSTIFICATION: As part of the City's efforts to reduce expenditures in order to address the ongoing structural budget deficit and operational concerns, staff met and conferred with the employee associations to implement a lower level retirement formula for new employees in the safety group and to have the new employees subject to the final compensation calculation based on an average 36 month period.

BACKGROUND: During negotiations with the employee bargaining groups, the City proposed implementation of a two-tier retirement system for new members. The bargaining units have agreed to a new tier formula.

At the November 13, 2012 council meeting, the Resolution of Intention and Exhibit were adopted. Once the Urgency Ordinance is adopted the new formula will take effect December 24, 2012.

At the December 11, 2012 council meeting, the Council adopted Urgency Ordinance 1459 which applied specifically to miscellaneous employees. At the time, negotiations were still pending with the Safety groups. Since then an agreement has been reached with Safety. A side letter agreement formalized this understanding and has been presented in a separate agenda report.

Adoption of the Urgency Ordinance is the final step required by CalPERS to implement a new retirement formula. Once the Public Employees' Pension Reform Act of 2013 (AB340) takes effect, the City will have three retirement formulas in place. These formulas are as follows:

- Current employees will remain at the 3% @ 50 retirement formula subject to the final compensation calculation based on the single highest year.
- New employees that are vested in CalPERS through a previous employer will be placed at the new 2% @ 50 retirement formula subject to the final compensation calculation based on an average 36 month period. This formula will be implemented with the adoption of this Urgency Ordinance 1460.

- New employees that have NEVER been vested in CalPERS will be subject to the retirement plan imposed by the Public Employees' Pension Reform Act of 2013 (AB340), which is the 2.7% @ 57 retirement formula subject to the final compensation calculation based on an average 36 month period. New employees will pay the full employee paid member contribution (EPMC) of 9% for safety employees.

FISCAL DATA: The benefit of having the tiered plans is that they will result in reducing future retirement costs for the City. For the second tiered plan, the immediate fiscal impact is unknown due to the fact that the 2@50 retirement formula for safety will only be given to new employees already vested in CalPERS. Savings will come in the future through lower rates as more and more of the work force is on the lower plan.

RECOMMENDED BY:


June Overholt
Administrative Services Director/Deputy City Manager

APPROVED BY:


Andy J. Takata
City Manager

Attachments:

- 1.Urgency Ordinance No. 1460
- 2.Amendment to Contract Exhibit

ORDINANCE NO. 1460

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF BANNING AND THE BOARD OF ADMINISTRATION TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1

That an amendment of the contract between the City Council of the City of Banning and the Board of Administration, California Public Employees Retirement System to provide different benefit levels to new employees in the local safety group entering membership for the first time in the safety classifications after the effective date of this amendment to contract is hereby authorized. A copy of said amendment being attached hereto, marked Exhibit A, and by such reference is made a part hereof as though herein set out in full.

SECTION 2

The Mayor of the City Council is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

SECTION 3

If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

SECTION 4

To the extent that the terms or provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof and such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed. The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 5

This ordinance is an urgency ordinance and shall take effect immediately upon adoption. The City Council hereby declares that the need for adoption of this ordinance as an urgency measure is necessary to preserve the public health, safety and welfare and is based upon the following facts:

- a. This ordinance will authorize the execution of an amendment to the contract between the California Public Employee Retirement System and the City regarding different level of benefits for new employees in the safety group. Pursuant to law, the ordinance to amend the contract cannot take effect at for least twenty (20) days after the adoption of a resolution of intention to approve the amendment to the contract. The resolution of intention was adopted by the City Council at its meeting of November 13, 2012.
- b. Based on the cost analysis, the adoption of the plan amendment will result in a decrease in benefits to new CalPERS members, however, should result in overall savings to the City.

SECTION 6

The City Clerk is hereby directed to cause publication of this ordinance within 15 days from its passage in a newspaper of general circulation, published and circulated in the City of Banning in accordance with Section 36933 of the Government Code, and thenceforth and thereafter the same shall be in full force and effect.

Passed, approved and adopted this 20th day of December, 2012.

Debbie Franklin, Mayor
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM AND
ORD NO. 1460

LEGAL CONTENT

David Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Urgency Ordinance No. 1460 was duly adopted at a special meeting of the City Council of the City of Banning on the 20th day of December, 2012 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Banning

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1965, and witnessed May 27, 1965, and as amended effective October 8, 1973, September 9, 1974, June 27, 1977, August 1, 1983, April 13, 1992, July 26, 1999, June 26, 2001, September 17, 2001, September 30, 2002, July 2, 2007 and March 4, 2009 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective March 4, 2009, and hereby replaced by the following paragraphs numbered 1 through 20 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members entering membership in the miscellaneous classification on or prior to the effective date of this amendment to contract and age 60 for local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1965 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
 - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
 - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.
 - (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
 - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.

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4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **ELECTED OFFICIALS.**
6. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
7. The percentage of final compensation to be provided for each year of credited prior and current service for those local miscellaneous members in employment prior to September 17, 2001 shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service for those local miscellaneous members in employment on September 17, 2001 and those local miscellaneous members in employment before and not on or after September 30, 2002, shall be determined in accordance with Section 20515 and 21354 of said Retirement Law (2% at age 55 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment on and after September 30, 2002 and not entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21354.4 of said Retirement Law (2.5% at age 55 Full).

10. The percentage of final compensation to be provided for each year of credited current service as a local miscellaneous member entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a local fire member in employment prior to April 13, 1992 shall be determined in accordance with Section 21362 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 50 Modified).
12. The percentage of final compensation to be provided for each year of credited prior and current service as a local fire member in employment on or after April 13, 1992 shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a local police member entering membership in the police classification on or prior to the effective date of this amendment to contract shall be determined in accordance with Section 21363.2 of said Retirement Law subject to the reduction provided therein for Federal Social Security (3% at age 50 Modified).
14. The percentage of final compensation to be provided for each year of credited current service as a local police member entering membership for the first time in the police classification after the effective date of this amendment to contract shall be determined in accordance with Section 21362 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 50 Modified).
15. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Sections 21624 and 21626 (Post-Retirement Survivor Allowance) for local safety members.
 - b. Section 20042 (One-Year Final Compensation) for local miscellaneous members and local police members entering membership on or prior to the effective date of this amendment to contract.
 - c. Section 20515 (Full Formula Plus Social Security) for past and future service for local fire members in employment on and after April 13, 1992 and for local miscellaneous members in employment on and after September 17, 2001. Legislation repealed said Section effective January 1, 2002.

- d. Section 20903 (Two Years Additional Service Credit).
- e. Section 20475 (Different Level of Benefits). Section 21353 (2% @ 60 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract, and

Section 21362 (2% @ 50 Modified formula) and Section 20037 (Three-Year Final Compensation) are applicable to local police members entering membership for the first time in the police classification after the effective date of this amendment to contract.

- 16. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on April 1, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 17. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
- 18. Public Agency shall also contribute to said Retirement System as follows:
 - a. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - b. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
- 19. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

20. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF BANNING

BY _____
KAREN DE FRANK, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk